

# **TRANSCRIPT OF RECORD.**

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**SUPREME COURT OF THE UNITED STATES.**

**OCTOBER TERM, 1922.**

**No. 317.**

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**FRANK G. GARDNER, AS TRUSTEE IN BANKRUPTCY OF  
THE O'GARA COAL COMPANY, PETITIONER,**

**vs.**

**CHICAGO TITLE & TRUST COMPANY, AS RECEIVER OF  
THE LA SALLE STREET TRUST AND SAVINGS BANK.**

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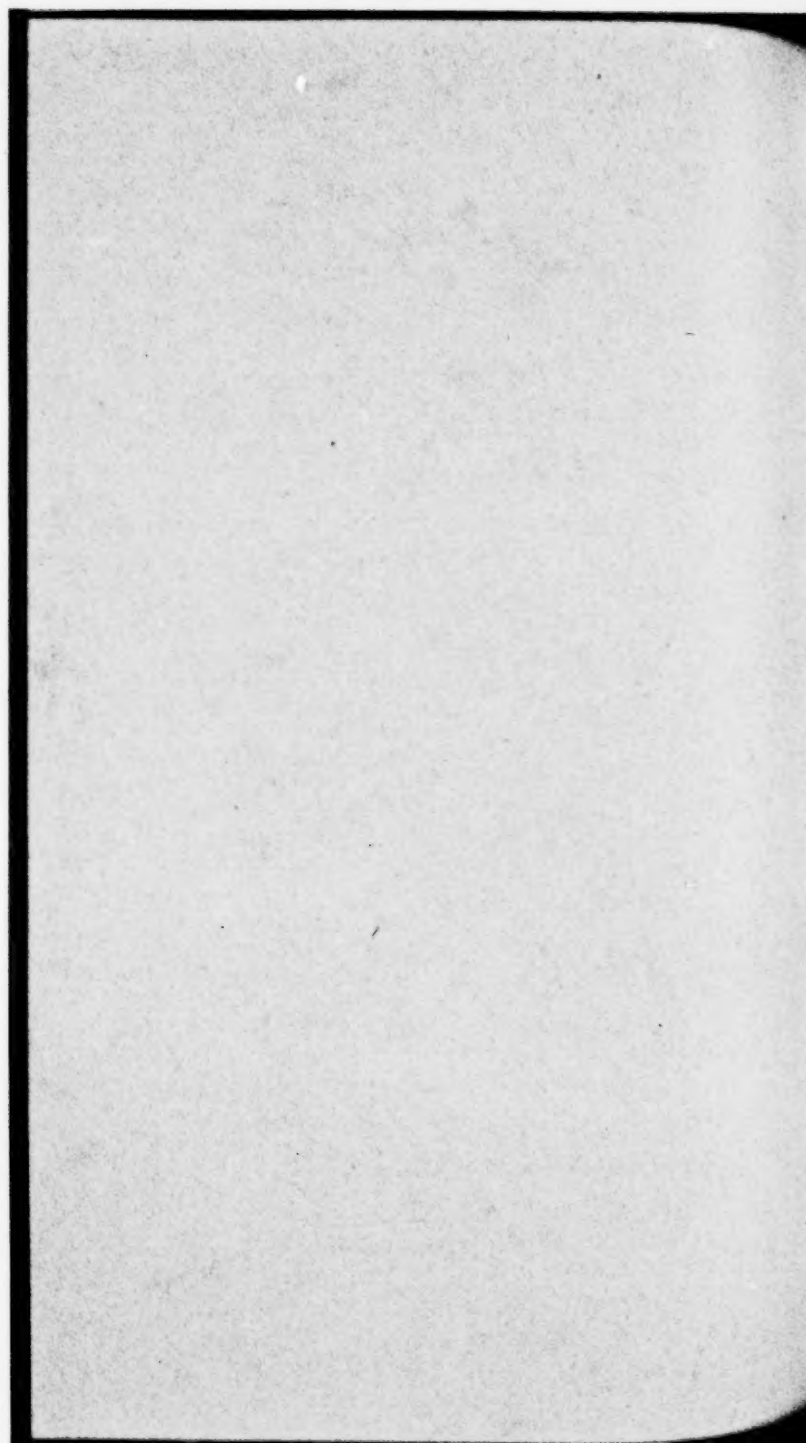
**ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT  
OF APPEALS FOR THE SEVENTH CIRCUIT.**

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**PETITION FOR CERTIORARI FILED APRIL 1, 1922.**

**CERTIORARI AND RETURN FILED MAY 13, 1922.**

**(28,801)**



(28,801)

SUPREME COURT OF THE UNITED STATES.

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No. 317.

FRANK G. GARDNER, AS TRUSTEE IN BANKRUPTCY OF  
THE OGARA COAL COMPANY, PETITIONER,

*vs.*

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*Placita.*

Pleas in the District Court of the United States for the Northern District of Illinois, Eastern Division, begun and held at the United States Court Room, in the City of Chicago, in said District and Division, before the Honorable George A. Carpenter, District Judge of the United States for the Northern District of Illinois, on Thursday, the third day of February, in the year of our Lord one thousand nine hundred and 21, being one of the days of the regular December Term of said Court, begun Monday, the twentieth day of December, 1920, and of our Independence the 145th year.

Present:

Honorable George A. Carpenter, District Judge.  
John J. Bradley, U. S. Marshal.  
John H. R. Jamar, Clerk.

Filed Nov. 3, 1920.

In the District Court of the United States, Northern District of Illinois, Eastern Division.

In Bankruptcy.

No. 21311.

In the Matter of O'GARA COAL COMPANY, Bankrupt.

Be it remembered, that there was filed in the office of Referee Sidney C. Eastman, on the third day of November, A. D. 1920, a certain petition for Review in words and figures following to-wit:

District Court of the United States, Northern District of Illinois,  
Eastern Division.

In Bankruptcy.

No. 21311.

In the Matter of O'GARA COAL COMPANY, a Corporation, Bankrupt.

*Petition for Review.*

To Sidney C. Eastman, Esq.,  
Referee in Bankruptcy:

Your petitioner, Chicago Title and Trust Company, as receiver of the La Salle Street Trust and Savings Bank, by this its petition says.

1. In the course of the proceedings in the above entitled matter on the 26th day of October, A. D. 1920, an order was made and entered by you in the words and figures following:

3 In the District Court of the United States for the Northern District of Illinois, Eastern Division.

In Bankruptcy.

No. 21311.

In the Matter of O'GARA COAL COMPANY, a Corporation, Bankrupt.

At Chicago, in the Eastern Division of the Northern District of Illinois, Before Sidney C. Eastman, Referee in Bankruptcy.  
This 26th Day of October, A. D. 1920.

This cause coming on for hearing this day on the petition of William C. Niblack, former Trustee herein, and the Supplemental Petition of Frank G. Gardner, Trustee herein, the Amended Answer thereto of William C. Niblack, former Receiver, and the Chicago Title and Trust Company, as Receiver of the La Salle Street Trust and Savings Bank, an Illinois banking corporation, on the admissions of fact of counsel made in open court, which admissions are to be given the same force and effect as if the facts admitted were alleged in the pleadings, and on the arguments of counsel, the court, being now fully advised in the premises, Finds from the pleadings and said admissions of fact, the following:

1. On September 13, A. D. 1913, a creditors' petition in bankruptcy was filed in the above entitled court and cause and a decree was entered therein by the court on October 3, A. D. 1913, adjudicating said O'Gara Coal Company a bankrupt.

2. On November 11, A. D. 1913, Thomas J. O'Gara, Fred A. Busse and Edward Weltman were duly appointed and qualified as trustees in bankruptcy of said O'Gara Coal Company, and said Fred A. Busse continued to act as one of said trustees until his death, which occurred prior to July 28, 1914, on which last mentioned day said

4 William C. Niblack was duly appointed and qualified as trustee in bankruptcy as successor to said Fred A. Busse, and thereafter said Thomas J. O'Gara, said Edward Weltman and said William C. Niblack continued to act as such trustees until June 30, 1916, at which time said William C. Niblack became the sole trustee in bankruptcy of said bankrupt estate, and continued to act as such up to the time of his death on the sixth day of June, 1920; that thereupon the petitioner, Frank G. Gardner was appointed and is now acting as such trustee and ever since then has been and now is vested with the exclusive right, title and interest in and to all of the assets of said bankrupt as of September 13, A. D. 1913, and such additional property and estate of said bankrupt as came into existence subsequent to said date last mentioned.

On or about September 6, A. D. 1913, the bankrupt, O'Gara Company, for a valuable consideration, executed and delivered certain demand note payable to the order of one C. B. Munday, the sum of Fifteen Thousand Dollars (\$15,000), with interest thereon at the rate of six per cent. per annum after date, and to the payment of the same said bankrupt delivered to said C. B. Munday Fifteen Hundred (1,500) shares of the capital stock of the Harrisburg-Saline Collieries Company, an Illinois corporation, now bankrupt, the estate of which is now pending in administration in the District Court, and said shares of stock, which were of the par value of One Hundred Dollars (\$100.) each, constituted the entire authorized capital stock of said Harrisburg-Saline Collieries Company.

On the 8th day of September, A. D. 1913, said C. B. Munday, for a valuable consideration, to-wit, the sum of Fifteen Thousand Dollars (\$15,000.) to him in hand paid by the La Salle Street Trust & Savings Bank, endorsed said promissory notes without recourse and delivered the same, together with the collateral above described, to said La Salle Street Trust & Savings Bank, an Illinois corporation, which continued thereafter to own and hold the same until the suspension of said Trust and Savings Bank and the appointment of its receiver, *which suspension and appointment of its receiver, such suspension and appointment is hereinafter shown, and no part of said promissory note, either the principal or interest thereon, has ever collected by said Trust & Savings Bank or its said receiver.*

On or about June 12, A. D. 1914, said La Salle Street Trust & Savings Bank, the same having previously become insolvent, ceased to transact business and discharge its corporate functions, and on June 18, A. D. 1914, the People of the State of Illinois, on the relation of James J. Brady, then Auditor of Public Accounts of the State of Illinois, filed a bill in chancery in the Circuit Court of Cook County, Illinois, against said Trust and Savings Bank and its stockholders, in which said suit such proceedings were had that on June 18, A. D. 1914, said William C. Niblack is duly appointed receiver of said La Salle Street Trust & Savings Bank and duly qualified and entered upon the discharge of his duties as such receiver, and took possession of the assets of said La Salle Street Trust & Savings Bank, including therein the said promissory note and the collateral above described, and continued to act until the date of his death on June 6, 1920; that the Chicago Title and Trust Company was thereupon appointed Receiver and has ever since retained and now has possession and control of the same, and is now proceeding, under the direction of said Circuit Court of Cook County, with the administration of the assets of said La Salle Street Trust & Savings Bank, said La Salle Street Trust & Savings Bank having been, on January 18, A. D. 1915, duly dissolved by a decree of said Circuit Court.

6. Prior to the suspension of business by said La Salle Street Trust & Savings Bank, and at various dates from and after Novem-

ber 11, 1913, and down to June 11, 1914, said Thomas J. O'Gara, Fred A. Busse and Edward Weltman, they then being the joint trustees in bankruptcy of said estate of O'Gara Coal Company and duly elected, qualified and so acting, deposited in said La Salle Street Trust & Savings Bank, a duly designated depository for moneys of bankrupt estates in and for the division aforesaid, funds of said estate of O'Gara Coal Company; which said deposits were duly credited to said trustees on the books of said bank and said deposits at the close of business on June 11, 1914, when said Trust and Savings Bank suspended, aggregated the sum of \$19,843.62, which said sum was then due and owing to said trustees on behalf of said bankrupt estate of O'Gara Coal Company, and the same, except as to the dividends subsequently paid thereon as hereinafter stated, is now legally due and owing to petitioner, as trustee of said bankrupt estate.

7. On June 6, A. D. 1916, said Thomas J. O'Gara, William C. Niblack and Edward Weltman, trustees as aforesaid, duly filed in the Circuit Court of Cook County, Illinois, in said receivership proceedings against the La Salle Street Trust & Savings Bank, 6 their certain verified proof of claim against said Trust and Savings Bank, which claim was duly allowed by said Circuit Court for the sum of \$19,843.62 as a claim against the assets of said insolvent La Salle Street Trust & Savings Bank, to be paid in due course of administration pro rata with the claims of other general creditors of said Trust and Savings Bank.

8. On or about August 14, A. D. 1916, said William C. Niblack, as receiver of said La Salle Street Trust & Savings Bank, in pursuance of an order of said Circuit Court of Cook County declaring a dividend payable to the creditors of said La Salle Street Trust & Savings Bank out of the proceeds of the assets thereof, paid to said William C. Niblack, as sole trustee in bankruptcy of said O'Gara Coal Company, upon said claim so allowed by said Circuit Court, the sum of \$4,963.35 out of the proceeds of the assets of said Trust and Savings Bank, and on June 19, A. D. 1918, a further dividend of ten per cent., amounting to \$1,985.34, was paid to said William C. Niblack, as trustee in bankruptcy as aforesaid, upon said claim, after the making of which payments there was left a balance due to said William C. Niblack, as sole trustee in bankruptcy, upon the principal of said claim, of the sum of \$12,894.93.

9. On June 5, 1916, said Thomas J. O'Gara, Edward Weltman and William G. Niblack, in their capacity as joint trustees in bankruptcy of the estate of O'Gara Coal Company, a corporation, bankrupt, filed in the Circuit Court of Cook County, Illinois, in the suit of the People of the State of Illinois on the relation of James J. Brady, Auditor of Public Accounts of the State of Illinois, against the La Salle Street Trust & Savings Bank and its stockholders, their petition setting forth the deposit by said trustees in bankruptcy in said La Salle Street Trust & Savings Bank prior to the suspension thereof, of said sum of Nineteen Thousand Eight Hundred Forty-three Dollars and Sixty-two Cents (\$19,843.62), and praying said



it Court to allow in favor of said trustees in bankruptcy and said La Salle Street Trust & Savings Bank prior to the suspension thereof said sum of Nineteen Thousand Eight Hundred and thirty-three Dollars and Sixty-two Cents (\$19,843.62), and praying Circuit Court to allow in favor of said trustees in bankruptcy against said La Salle Street Trust & Savings Bank a preferred claim to the amount of \$19,843.62 and to adjudge the same entitled to priority of payment out of the assets of said La Salle Street Trust & Savings Bank in the possession of respondent, as receiver thereof, in advance of the general unsecured creditors, or in the event that priority of said claim were denied, that said claim might be allowed for said sum as a general claim against the assets of said insolvent, and for such other and other relief as might be proper in the premises and consistent with equity and good conscience, which said petition was subsequently abandoned by said trustees in bankruptcy so far as it prayed for the allowance of a preferred claim, and the said claim was allowed as a general claim as hereinbefore stated.

10. On September 11, 1914, said William C. Niblack, as receiver of said La Salle Street Trust & Savings Bank, filed a certain proof of unsecured debt against said bankrupt estate of O'Gara Coal Company in the above entitled court and cause, claiming the sum of Fifteen Thousand Nine Hundred Eight Dollars and Twenty Cents (\$15,908.20), with interest thereon at the rate of six per cent per annum from September 6, A. D. 1913, upon the promissory note of said bankrupt mentioned in paragraph number 3 above hereof, and thereafter, on August 21, 1917, filed an amended proof of secured debt upon said promissory note for the sum of Fifteen Thousand Dollars (\$15,000.), with interest thereon as provided for by said note, but no payments have been made or dividends paid upon said claim or received thereon by the said Receiver out of the assets of said bankrupt estate, or otherwise.

11. Upon the foregoing facts the Court Finds as a matter of law that said Frank G. Gardner, as trustee in bankruptcy of said O'Gara Coal Company, bankrupt, is entitled to have set-off against the claim of said Chicago Title & Trust Company, as receiver of the La Salle Street Trust & Savings Bank, the said sum of Twelve Thousand Eight Hundred Ninety-four Dollars and Ninety-three Cents (\$12,894.93), and that upon the payment by said Frank G. Gardner, as trustee in bankruptcy as aforesaid, to Chicago Title and Trust Company, as receiver of said La Salle Street Trust & Savings Bank, of the balance due upon said promissory note, said Frank G. Gardner, as trustee in bankruptcy, as aforesaid, is entitled to the cancellation of said bankrupt's said promissory note and its delivery up to said Frank G. Gardner, as trustee in bankruptcy as aforesaid, together with said fifteen hundred (1,500) shares of the capital stock of said Harrisburg-Saline Collieries Company pledged as aforesaid as collateral security for the payment of said promissory note for Fifteen Thousand Dollars (\$15,000.).

8 It is Therefore Ordered, Adjudged and Decreed by the Court that the prayer of the petition of said Frank G. Gardner, as trustee in bankruptcy herein (as aforesaid), be and the same is hereby granted, and that said Frank G. Gardner, as said Trustee (in bankruptcy as aforesaid,) pay to said Chicago Title and Trust Company, as receiver of the La Salle Street Trust & Savings Bank, the sum of — Dollars (\$—), being the amount due and owing upon said promissory note executed *see* b'k'pt for Fifteen Thousand Dollars (\$15,000.) after allowing thereon as a set-off the sum of Twelve Thousand Eight Hundred Ninety-four Dollars and Ninety-three Cents (\$12,894.93), and that upon said payment being made the liability of said bankrupt upon said note be extinguished and said Chicago Title and Trust Company, as receiver of said La Salle Street Trust & Savings Bank, deliver to said Frank G. Gardner, as trustee in bankruptcy, as aforesaid, the said promissory note duly cancelled, and surrender to said Frank G. Gardner, as trustee in bankruptcy, as aforesaid, said fifteen hundred (1,500) shares of the capital stock of said Harrisburg-Saline Collieries Company.

It is Further Ordered, Adjudged and Decreed by the Court that upon the payment herein provided to be made by said Frank G. Gardner, as trustee in bankruptcy as aforesaid, to said Chicago Title and Trust Company, as receiver of the La Salle Street Trust & Savings Bank, and the cancellation and surrender of said note and the surrender of said collateral, the claims of said receiver herein filed and identified as Numbers 222 and 267 respectively, shall stand satisfied in full on the records of said bankrupt estate in the above entitled court and cause and the claim of said Frank G. Gardner, as trustee in bankruptcy as aforesaid, against said La Salle Street Trust & Savings Bank shall be deemed paid and satisfied.

2. Said order was and is erroneous and void in that it was and is contrary to the evidence and to the facts recited therein and is contrary to the law applicable to the evidence and to said facts, and the same is in fact a nullity.

Wherefore your petitioner prays that the said order may be viewed as provided in the Bankruptcy Act of 1898, General Order XXVII.

Dated November 1, 1920.

CHICAGO TITLE & TRUST  
COMPANY,

*Receiver of the La Salle Street Trust &  
Savings Bank, Petitioner.*

9 STATE OF ILLINOIS,  
*Cook County, ss:*

Abel Davis, being first duly sworn, on oath deposes and says that he is vice president of Chicago Title and Trust Company which is the receiver of the La Salle Street Trust and Savings Bank and the petitioner in the foregoing petition; that he has read the said pe-

and knows the contents thereof and that the same is true according to the best of his knowledge, information and belief.

ABEL DAVIS.

Subscribed and sworn to before me this 1st day of November, 1920.

[SEAL.]

ALBERT L. HALL,  
Notary Public.

Endorsed:) Filed Nov. 3—1920. Sidney C. Eastman, Referee.

*Certificate for Review.*

Filed Nov. 5, 1920.

And on to-wit: the fifth day of November, 1920, there was filed in the office of the Clerk of said Court a certain Certificate for Review in words and figures following, to-wit:

In the District Court of the United States for the Northern District of Illinois, Eastern Division.

In Bankruptcy.

No. 21311.

In the Matter of O'GARA COAL COMPANY, Bankrupt.

I, Sidney C. Eastman, one of the referees of said court in bankruptcy, do hereby certify that in the course of the proceedings in said cause before me, the following question arose pertinent to the said proceedings:

I. On August 21, 1917, William C. Niblack, receiver of the La Salle Street Trust and Savings Bank, filed a claim herein for \$15,000 with interest at 6% from September 6, 1913, secured by certain stock of the Harrisburg-Saline Collieries Company. This claim is hereto attached and marked "Exhibit A."

II. On May 22, 1918, the trustee herein filed his petition praying to set off an indebtedness of the La Salle Street Trust & Savings Bank to the trustee against said claim. This petition is hereto attached and marked "Exhibit B."

III. On May 27, 1918, William C. Niblack, claimant, filed his answer to said petition, which answer is hereto attached and marked "Exhibit C."

IV. On October 26, 1920, after hearing, I entered an order allowing the set off as prayed by the trustee. A copy of this order is incorporated in the petition for review hereinafter referred to.

V. On November 3, 1920, the Chicago Title & Trust Company, successor to William C. Niblack, receiver of the La Salle Street Trust & Savings Bank, claimant, filed a petition for a review of said order, which petition is hereto attached and marked "Exhibit D."

All the facts and findings of law and fact are fully set out in the order incorporated in the said petition for review.

And the said question is certified to the Judge for his opinion thereon.

Dated at Chicago, the 4th day of November, 1920.

SIDNEY C. EASTMAN,  
*Referee in Bankruptcy.*

11

## EXHIBIT A.

*Proof of Secured Debt.*

In the District Court of the United States for the Northern District of Illinois, Eastern Division.

In Bankruptcy.

No. 21311.

In the Matter of O'GARA COAL COMPANY, a Corporation, Bankrupt.

UNITED STATES OF AMERICA,  
*Northern District of Illinois,*  
*State of Illinois,*  
*County of Cook, ss:*

At Chicago, in said Northern District of Illinois, on the 15th day of August, A. D. 1917, came William C. Niblack, as Receiver of the La Salle Street Trust & Savings Bank, of Chicago, in the County of Cook in said Northern District of Illinois, and State of Illinois, and made oath and says, that O'Gara Coal Company, a corporation, the person against whom a petition for adjudication of bankruptcy has been filed, was at and before the filing of said petition and still is justly and truly indebted to said La Salle Street Trust & Savings Bank, an Illinois banking corporation, to whose rights and credits said deponent has succeeded, in the sum of fifteen thousand dollars (\$15,000.00) with interest thereon from September 6, A. D. 1913 at the rate of six per cent per annum; that the consideration of said debt is as follows:

For money loaned to said bankrupt, evidenced by its note delivered to said La Salle Street Trust & Savings Bank, a copy whereof, substituted for the original is hereto attached; that no part of said debt has been paid; that there are no set-offs or counterclaims to the same and that the only securities held by this deponent for said debt are the following:

Cert. #134 for 1 share of the capital stock of the Harrisburg Saline Collieries Co. a corporation, issued to Thomas J. O'Gara;

" #142 for 347 shares of same, issued to W. A. Brewerton,

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" #143 for one share of same, issued to Thomas S. Jones,

" #144 for one share of same, issued to Joseph E. Ward,

" #147 for one share of same, issued to L. J. Walsh,

" #148 for 39 shares of same, issued to T. J. O'Gara,

" #151 for 1,110 shares of same, issued to O'Gara Coal Company,

representing the total authorized capital stock of said Harrisburg Saline Collieries Company, a corporation, of fifteen hundred shares of the par value of \$100.00 per share, a total of \$150,000.00; that all of said securities pledged with said La Salle Street Trust & Savings Bank by said bankrupt, as collateral security, for the payment of the promissory note of said bankrupt, are now held by and are in the possession of this deponent, subject to said indebtedness stated, and subject to redemption upon payment to this deponent of the amount due upon said note; that no valid or bona fide sale of said securities was heretofore made by said La Salle Street Trust & Savings Bank, or by any one claiming through or under said bank, and that the foregoing proof of debt is made by this deponent by way of amendment to his proof of debt heretofore and on to-wit: September 11, A. D. 1914, filed in the above entitled Court and cause.

WILLIAM C. NIBLACK,

*As Receiver of the La Salle Street Trust & Savings Bank Aforesaid, Creditor.*

Subscribed and sworn to before me this 15th day of August, A. D. 1917.

[SEAL.]

MAUDE ROWELL,

*Notary Public.*

My Commission expires Oct. 5, 1920.

13 In the District Court of the United States for the Northern District of Illinois, Eastern Division.

In Bankruptcy.

No. 21311.

In the Matter of O'GARA COAL COMPANY, a Corporation, Bankrupt.

To Hiram T. Gilbert, Esq., Chicago, Illinois:

I, William C. Niblack, as Receiver of the La Salle Street Trust & Savings Bank, an Illinois Banking corporation, of Chicago, in the County of Cook and State of Illinois, do hereby authorize you

to attend the meeting or meetings of creditors of the bankrupt aforesaid, at a court of bankruptcy, wherever advertised or directed to be holden, on the day and at the hour appointed and notified by said Court in said matter, or at such other place and time as may be appointed by the Court, for the holding such meeting or meetings or at which such meeting or meetings, or any adjournment or adjournments thereof may be held, and then and there from time to time, and as often as there may be occasion, for me and in my name to vote for or against any proposal or resolution that may be then submitted under the Acts of Congress relating to bankruptcy; and in the choice of trustee or trustees of the estate of the said bankrupt, and for me to assent to such appointment of trustee; and with like powers to attend and vote at any other meeting or meetings of creditors, or sitting or sittings of the Court, which may be held therein, for any of the purposes aforesaid; also to accept any composition proposed by said bankrupt in satisfaction of its debts, and to receive payment of dividends and of money due me under any composition, and for any other purpose in my interest whatsoever, with full power of substitution. This letter of attorney and power is intended to and shall supersede, annul, revoke and terminate a similar letter of attorney and power directed to William A. Rogan, of Chicago, Illinois, and executed by me on to-wit: September 11, A. D. 1914.

In Witness Whereof, I have hereunto signed my name and  
14 affixed my seal as Receiver aforesaid, the 15th day of August  
A. D. 1917.

[SEAL.]

WILLIAM C. NIBLACK,  
*As Receiver of the La Salle Street  
Trust & Savings Bank Aforesaid.*

Acknowledged before me this 15th day of August, A. D. 1917.

[SEAL.]

MAUDE ROWELL,  
*Notary Public.*

My commission expires Oct. 5, 1920.

Copy.

*Collateral Note.*

\$15,000.00.

Chicago, Sept. 6, 1913.

On Demand, after date, for Value Received, we Promise to Pay to the order of C. B. Munday the sum of fifteen thousand Dollars, at The La Salle Street Trust & Savings Bank, Chicago, with interest at the rate of six (6) per cent, per annum after date having deposited with said C. B. Munday as collateral security,

Cert. #134 for 1 share Harrisburg Saline Collieries Co. T. J. O'Gara,

142 for 347 shares Harrisburg Saline Collieries Co. W. A. Brewerton,

- 143 for 1 share Harrisburg Saline Collieries Co. Thomas S. Jones  
 144 for 1 share Harrisburg Saline Collieries Co. Jos. E. Ward,  
 147 for 1 share Harrisburg Saline Collieries Co. L. J. Walsh  
 148 for 39 shares Harrisburg Saline Collieries Co. T. J. O'Gara  
 151 for 1,110 shares Harrisburg Saline Collieries Co. O'Gara Coal Co.

which we hereby give the said C. B. Munday, his agent, or assignee, authority to sell, or any part thereof, on the maturity of this note, or at any time thereafter, or before in the event of said securities depreciating in value, in the opinion of said C. B. Munday at public or private sale, at the discretion of said C. B. Munday, his agent or his assignee, without advertising the same, or demanding payment, or giving us any notice, and to apply so much of the proceeds thereof to the payment of this Note as may be necessary to pay the same, with all interest due thereon, and also to the payment of all expenses attending the sale of the said collateral including Attorney's fees; and in case the proceeds of the sale of the said collateral shall not cover the principal, interest, and expenses, we promise to pay the deficiency forthwith, after such sale. And at any sale of said collaterals, or any part thereof, made by virtue hereof, it shall be optional with the legal owner or holder of this Note to bid for and purchase said collaterals or any part thereof.

O'GARA COAL CO.,  
 By T. J. O'GARA,  
*Pres.*

Due — — —.

Know All Men By These Presents, That we, the Subscribers being justly indebted to C. B. Munday upon the above written Promissory note, bearing even date herewith, for the sum of fifteen thousand dollars, with interest at the rate of six (6) per cent per annum after date and due on demand after date.

Now Therefore, in Consideration of the Premises, we do hereby make, constitute and appoint C. B. Munday or any Attorney of any Court of Record, to be our true and lawful Attorney, irrevocably, for us and in our name, place, and stead, to appear in any Court of Record, in term time or in vacation, in any of the States or Territories of the United States, or elsewhere, at any time after said Note becomes due, to waive the service of process, and confess a judgment in favor of the said C. B. Munday, his agent or his assigns or assignees, upon the said Note, for the amount thereof, and interest thereon to the day of the entry of the said judgment, together with costs, and One hundred dollars, Attorney's fees; and also, to file a cognovit for the amount thereof, with an agreement therein that no writ of error or appeal shall be prosecuted upon the judgment entered by virtue hereof, nor any bill in equity filed to interfere in any manner with the operation of said judgment, or issuing the execution

thereon; and, also, to waive all said judgment, or issuing the execution thereon; and, also, to waive all benefit or advantage to which we may be entitled by virtue of any Homestead or other Exemption Law *nor* or thereafter in force, in this or any State or Territory, where judgment may be entered by virtue hereof; hereby ratifying and confirming all that the said Attorney may do by virtue hereof.

16           Witness our hand and seal, this sixth (6) day of September, A. D. 1913.

O'GARA COAL CO., [SEAL.]  
By T. J. O'GARA, [SEAL.]  
*Pres.*

In presence of

CHAS. E. WARD.

(Endorsed:) Filed August 21, 1917, at 10 A. M. Sidney C. Eastman, Referee.

#### EXHIBIT B.

In the District Court of the United States for the Northern District of Illinois, Eastern Division,

In Bankruptcy.

No. 21311.

In the Matter of O'GARA COAL COMPANY, a Corporation, Bankrupt.

To the Honorable Sidney C. Eastman, referee in bankruptcy, before whom said cause is pending on general reference:

The petitioner, William C. Niblack, of Chicago, Illinois, by this petition respectfully represents;

1. That he is the sole acting Trustee in bankruptcy of the above entitled estate, having become such by resignation of his co-trustees, Thomas J. O'Gara and Edward Weltman, whose respective resignations were tendered to and accepted by said District Court, evidenced by its order entered on June 30th, A. D. 1916; that no successors to said Trustees resigned were either appointed by the Court, or elected by creditors, and that this petitioner is accordingly vested with the exclusive right, title and interest in and to all of the assets, of said bankrupt estate, as of the 13th day of September, A. D. 1913, on which day bankruptcy proceedings were instituted herein.

2. On information and belief this petitioner avers, that on or about September 6, A. D. 1913, the said bankrupt, O'Gara Coal Company, made, executed and delivered its certain demand note, payable to the order of one C. B. Munday, for the sum of fifteen thousand dollars (\$15,000.00), with interest due thereon at the rate of six



per cent per annum after the date thereof, and to secure the payment of said note, said bankrupt delivered to the payee therein named, fifteen hundred shares of the capital stock of the Harrisburg Saline Collieries Company, an Illinois corporation (the estate of which is now pending in administration in this Court); that said shares of stock of the par value of one hundred dollars each, constitute the entire authorized issue of the capital stock of said corporation.

3. On information and belief, your petitioner further avers, that said promissory note was by the said C. B. Munday endorsed in blank without recourse, and by him delivered to the La Salle Street Trust & Savings Bank, an Illinois banking corporation, together with the collateral described, securing its payment; that thereafter, on June 12th, A. D. 1914, said bank ceased to transact business and to discharge its corporation functions, whereupon on June 18, A. D. 1914, on the relation of James J. Brady, auditor of public accounts of the State of Illinois, a bill in chancery was filed, in the name of The People of the State of Illinois, in the Circuit Court of Cook County, wherein it was alleged among other things, that said La Salle Street Trust & Savings Bank (one of the defendants to said bill named), was insolvent and that a Receiver should be appointed for the purpose of conserving its assets; that on said day last mentioned your petitioner, William C. Niblack, was appointed Receiver of said bank, qualified as such, and took possession of its property, assets and effects, including therein the said promissory note described, and the collateral thereto appertaining and that said Receiver now has possession and control of the same.

4. On information and belief, your petitioner further avers, that at sundry times from and after November 11th, A. D. 1913, and continuing to and unto to-wit: June 18, A. D. 1914, Thomas J. O'Gara, Fred A. Busse (since deceased), and Edward Weltman, then constituting the joint Trustees in bankruptcy of said estate of O'Gara Coal Company, and duly elected, qualified and so acting, deposited in said La Salle Street Trust and Savings Bank (a duly designated depository for moneys of bankrupt estates in and for the District and Division aforesaid,) funds of said estate of O'Gara Coal Company, which deposits were duly credited to said Trustees named; that said deposits on to-wit: June 18, A. D. 1914, aggregated the sum of \$19,843.62, which said sum was then due and owing to said Trustees, on behalf of said bankrupt estate of O'Gara Coal Company, and which is now legally due and owing to your petitioner, as successor in title to said Trustees; that no part of said amount  
18 has been paid excepting only the sum of to-wit: \$4,963.35, representing a first dividend of twenty-five per cent, heretofore declared and paid by the Receiver upon the indebtedness of said La Salle Street Trust & Savings Bank.

5. Your petitioner further alleges, that by virtue of the Act of Congress then and now in force, relating to Bankruptcy, and more particularly by Section 68 thereof, he as Trustee aforesaid, is en-

titled to off-set against the claim of said Receiver, of the La Salle Street Trust and Savings Bank, the amount due to said estate of O'Gara Coal Company, and unpaid, to-wit: the sum of \$14,880.27 and that upon payment of such balance, if any, as may remain due upon the note of said bankrupt O'Gara Coal Company, to said La Salle Street Trust & Savings Bank, the collateral held by said Receiver, consisting of fifteen hundred shares of the capital stock of said Harrisburg Saline Collieries Company, should in equity be released and possession thereof decreed to your petitioner.

Wherefore, your petitioner prays the entry of an order, directing the Receiver of said La Salle Street Trust & Savings Bank (hereby made a respondent to this petition), to answer the same by a show day, and that upon the hearing of said petition and answer, an order or decree may be entered, off-setting the amount due to your petitioner from said La Salle Street Trust & Savings Bank, against the indebtedness of said bankrupt, O'Gara Coal Company, due to said bank, and that upon adjustment and payment of whatever balance, if any, may be decreed as due to said Receiver from your petitioner, such order or decree may further direct that the Receiver of said La Salle Street Trust & Savings Bank shall deliver to your petitioner all of the aforesaid collateral, held by him, to secure the payment of said bankrupt's note, and for such other, further and incidental relief as may be proper herein, all without prejudice to such claims your petitioner may have for priority (should the foregoing petition be denied), against said La Salle Street Trust & Savings Bank, as well as the Illinois Surety Company, the surety upon the bond of said La Salle Street Trust & Savings Bank, heretofore executed and delivered to the United States of America, as required by law.

WILLIAM C. NIBLACK,

*Sole Acting Trustee in Bankruptcy of  
the Estate of O'Gara Coal Company.*

19 UNITED STATES OF AMERICA,  
*Northern District of Illinois,  
State of Illinois, County of Cook, ss:*

William C. Niblack, being first duly sworn, on oath deposes and says, that he is the petitioner named in the foregoing petition by him subscribed; that he has read said petition and knows the contents thereof, and that the statements of fact therein contained are true, according to the best of his knowledge, information and belief.

WILLIAM C. NIBLACK.

Subscribed and sworn to before me this 21st day of May, A. D. 1918.

[SEAL.]

MAUDE ROWELL,

*Notary Public.*

(Endorsed:) Filed May 22, 1918. Sidney S. Eastman, Referee.

## EXHIBIT C.

ict Court of the United States, Northern District of Illinois,  
Eastern Division.

In Bankruptcy.

No. 21311.

he Matter of O'GARA COAL COMPANY, a Corporation, Bankrupt.

er of William C. Niblack, in His Capacity as Receiver of the  
Salle Street Trust & Savings Bank, to the Petition of William  
Niblack, in His Capacity as Sole Acting Trustee in Bankruptcy  
O'Gara Coal Company, a Corporation, Bankrupt.

espondent William C. Niblack, as receiver of the La Salle Street  
t and Savings Bank, for answer to said petition, says:

Respondent admits the facts set forth and alleged in paragraphs  
3, and 4 of said petition.

Respondent denies that by virtue of the acts of Congress, then and  
in force relating to bankruptcy and more particularly by Sec-  
68 thereof, or otherwise, petitioner, as trustee in bankruptcy as  
aforesaid, is entitled to set off against the claim of respondent,  
as receiver of said La Salle Street Trust & Savings Bank, the  
said sum of \$14,880.27, or any portion thereof, or that upon  
payment of such balance, if any, as might remain due upon the  
of said bankrupt, O'Gara Coal Company, to said La Salle Street  
st and Savings Bank, the collateral held by respondent, as re-  
er aforesaid, consisting of 1,500 shares of the capital stock of said  
risburg-Saline Collieries Company should in equity be released  
possession thereof decreed to petitioner, as trustee in bankruptcy  
foresaid, but on the contrary, respondent says that petitioner, as  
tee in bankruptcy, is not entitled to set off any amount whatever  
inst the amount of said promissory note and interest thereon or  
eeive from respondent, as receiver of said La Salle Street Trust  
Savings Bank, said 1,500 shares of the capital stock of said Har-  
burg-Saline Collieries Company, or any portion thereof, until pe-  
ner, as trustee in bankruptcy as aforesaid, has paid to respondent,  
ceiver of said La Salle Street Trust and Savings Bank, the full  
unt of said promissory note with interest.

Wherefore respondent, having fully answered said petition, prays  
t the same may be dismissed with costs.

WILLIAM C. NIBLACK,

*Receiver of the La Salle Street  
Trust & Savings Bank,*

By HIRAM T. GILBERT,  
*His Solicitor.*

UNITED STATES OF AMERICA,  
*Northern District of Illinois,*  
*State of Illinois, Cook County, ss:*

William C. Niblack being first duly sworn on his oath deposes and says that he is the respondent named in the foregoing answer by him subscribed; that he has read the said answer and knows the contents thereof and that the statements of facts therein contained are true according to the best of his knowledge, information and belief.

WILLIAM C. NIBLACK.

Subscribed and sworn to before me this 22nd day of May, A. D. 1918.

[SEAL.]

ALBERT L. HALL,  
*Notary Public.*

(Endorsed:) Filed May 27, 1918. Sidney C. Eastman, Referee.

21

EXHIBIT D.

Filed Before Referee 11/3/1920.

District Court of the United States, Northern District of Illinois  
Eastern Division.

In Bankruptcy.

No. 21311.

In the Matter of O'GARA COAL COMPANY, a Corporation, Bankrupt.

*Petition for Review.*

To Sidney C. Eastman, Esq., Referee in Bankruptcy:

Your petitioner, Chicago Title and Trust Company, as receiver of the La Salle Street Trust and Savings Bank, by this its petition says:

1. In the course of the proceedings in the above entitled matter on the 26th day of October, A. D. 1920, an order was made and entered by you in the words and figures following:

the District Court of the United States for the Northern District of Illinois, Eastern Division.

In Bankruptcy.

No. 21311.

the Matter of O'GARA COAL COMPANY, a Corporation, Bankrupt.

Chicago, in the Eastern Division of the Northern District of Illinois, Before Sidney C. Eastman, Referee in Bankruptcy, This 26th Day of October, A. D. 1920.

This cause coming on for hearing this day on the petition of William C. Niblack, former Trustee herein, and the Supplemental Petition of Frank G. Gardner, Trustee herein, the Amended Answer thereto of William C. Niblack, former Receiver, and Chicago Title and Trust Company, as Receiver of the La Salle Street Trust and Savings Bank, an Illinois banking corporation, on the admissions of fact of counsel made in open court, which admissions are to be given the same force and effect as if the facts admitted were alleged in the pleadings, and on the arguments of counsel, the court, being now fully advised in the premises, Finds from the pleadings and said admissions of fact, the following:

1. On September 13, A. D. 1913, a creditors' petition in bankruptcy was filed in the above entitled court and cause and a decree was entered therein by the court on October 3, A. D. 1913, adjudging said O'Gara Coal Company a bankrupt.
2. On November 11, A. D. 1913, Thomas J. O'Gara, Fred A. Busse and Edward Weltman were duly appointed and qualified as trustees in bankruptcy of said O'Gara Coal Company, and said Fred A. Busse continued to act as one of said trustees until his death, which occurred prior to July 28, 1914, on which last mentioned day said William C. Niblack was duly appointed and qualified as trustee in bankruptcy as successor to said Fred A. Busse, and thereafter said Thomas J. O'Gara, said Edward Weltman and said William C. Niblack continued to act as such trustees until June 30, 1916, at which time said William C. Niblack became the sole trustee in bankruptcy of said bankrupt estate, and continued to act as such up to the time of his death on the sixth day of June, 1920; that thereupon the petitioner, Frank C. Gardner was appointed and is now acting as such trustee and ever since then has been and now is vested with the exclusive right, title and interest in and to all of the assets of said bankrupt as of September 13, A. D. 1913, and such additional property and estate of said bankrupt as came into existence subsequent to said date last mentioned.
3. On or about September 6, A. D. 1913, the bankrupt, O'Gara Coal Company, for a valuable consideration, executed and delivered

its certain demand note payable to the order of one C. B. Munday, for the sum of Fifteen Thousand Dollars (\$15,000), with interest thereon at the rate of six per cent per annum after date, and to secure payment of the same said bankrupt delivered to said C. B. Munday Fifteen Hundred (1,500) shares of the capital stock of the Harrisburg-Saline Collieries Company, an Illinois corporation, now bankrupt, the estate of which is now pending in administration in said District Court, and said shares of stock, which were of the par value of One Hundred Dollars (\$100) each, constituted the entire authorized capital stock of said Harrisburg-Saline Collieries Company.

4. On the 8th day of September, A. D. 1913, said C. B. Munday, for valuable consideration, to wit the sum of Fifteen Thousand Dollars (\$15,000) to him in hand paid by the La Salle Street Trust & Savings Bank, endorsed said promissory note without recourse and delivered the same, together with the collateral above described, to said La Salle Street Trust & Savings Bank, an Illinois corporation, which continued thereafter to own and hold the same until the suspension of said Trust and Savings Bank and the appointment of its receiver, which suspension and appointment is hereinafter shown, and no part of said promissory note, either the principal or interest thereon, was ever collected by said Trust & Savings Bank or its said receiver.

5. On or about June 12, A. D. 1914, said La Salle Street Trust & Savings Bank, the same having previously become insolvent, ceased to transact business and discharge its corporate functions, and on June 18, A. D. 1914, the People of the State of Illinois, on the relation of James J. Brady, then Auditor of Public Accounts of the State of Illinois, filed a bill in chancery in the Circuit Court of Cook County, Illinois, against said Trust and Savings Bank and its stockholders, in which said suit such proceedings were had that on June 18, A. D. 1914, said William C. Niblack was duly appointed receiver of said La Salle Street Trust & Savings Bank and duly qualified and entered upon the discharge of his duties as such receiver, and took possession of the assets of said La Salle Street Trust & Savings Bank, including therein the said promissory note and the collateral above described, and continued to act until the date of his death on June 6, 1920; that the Chicago Title and Trust Company was thereupon appointed Receiver and has ever since retained and now has possession and control of the same, and is now proceeding, under the direction of said Circuit Court of Cook County, with the administration of the assets of said La Salle Street Trust & Savings Bank, said La Salle Street Trust & Savings Bank having been, on January 18, A. D. 1915, duly dissolved by a decree of said Circuit Court.

6. Prior to the suspension of business by said La Salle Street Trust & Savings Bank, and at various dates from and after November 11, 1913, and down to June 11, 1914, said Thomas J. O'Gara, Fred A. Busse and Edward Weltman, they then being the joint trustees in bankruptcy of said estate of O'Gara Coal

company and duly elected, qualified and so acting, deposited in said La Salle Street Trust & Savings Bank, a duly designated depository of moneys of bankrupt estates in and for the division aforesaid, funds of said estate of O'Gara Coal Company; which said deposits were duly credited to said trustees on the books of said bank and said deposits at the close of business on June 11, 1914, when said Trust and Savings Bank suspended, aggregated the sum of \$19,843.62, which said sum was then due and owing to said trustees on behalf of said bankrupt estate of O'Gara Coal Company, and the same, except as to the dividends subsequently paid thereon as hereinafter stated, is now legally due and owing to petitioner, as trustee of said bankrupt estate.

7. On June 6, A. D. 1916, said Thomas J. O'Gara, William C. Niblack and Edward Weltman, trustees as aforesaid, duly filed in the Circuit Court of Cook County, Illinois, in said receivership proceedings against the La Salle Street Trust & Savings Bank, their certain verified proof of claim against said Trust and Savings Bank, which claim was duly allowed by said Circuit Court for the sum of \$19,843.62 as a claim against the assets of said insolvent La Salle Street Trust & Savings Bank, to be paid in due course of administration pro rata with the claims of other general creditors of said Trust and Savings Bank.

8. On or about August 14, A. D. 1916, said William C. Niblack, as receiver of said La Salle Street Trust & Savings Bank, in pursuance of an order of said Circuit Court of Cook County declaring a dividend payable to the creditors of said La Salle Street Trust & Savings Bank out of the proceeds of the assets thereof, paid to said William C. Niblack, as sole trustee in bankruptcy of said O'Gara Coal Company, upon said claim so allowed by said Circuit Court, the sum of \$4,963.35 out of the proceeds of the assets of said Trust and Savings Bank, and on June 19, A. D. 1918, a further dividend of ten per cent, amounting to \$1,985.34, was paid to said William C. Niblack, as trustee in bankruptcy as aforesaid, upon said claim, after the making of which payments there was left a balance due to said William C. Niblack, as sole trustee in bankruptcy, upon the principal of said claim, of the sum of \$12,894.93.

9. On June 5, 1916, said Thomas J. O'Gara, Edward Weltman and William C. Niblack, in their capacity as joint trustees in bankruptcy of the estate of O'Gara Coal Company, a corporation, bankrupt, filed in the Circuit Court of Cook County, Illinois, in the suit of the People of the State of Illinois on the relation of James J. Brady, Auditor of Public Accounts of the State of Illinois, against the La Salle Street Trust & Savings Bank and its stockholders, their petition setting forth the deposit by said trustees in bankruptcy in said La Salle Street Trust & Savings Bank prior to the suspension thereof, of said sum of Nineteen Thousand Eight Hundred Forty-three Dollars and Sixty-two Cents (\$19,843.62), and praying said Circuit Court to allow in favor of said trustees in bankruptcy and against said La Salle Street Trust & Savings Bank

prior to the suspension thereof said sum of Nineteen Thousand Eight Hundred Forty-three Dollars and Sixty-two Cents (\$19,843.62), and praying said Circuit Court to allow in favor of said trustees in bankruptcy and against said La Salle Street Trust & Savings Bank preferred claim to the amount of \$19,843.62 and to adjudge the same entitled to priority of payment out of the assets of said La Salle Street Trust & Savings Bank in the possession of respondent, as receiver thereof, in advance of the general unsecured creditors, or in the event that priority of said claim were denied, that said claim might be allowed for said sum as a general claim against the assets of said insolvent, and for such other and further relief as might be proper in the premises and consistent with equity and good conscience, which said petition was subsequently abandoned by said trustees in bankruptcy so far as it prayed for the allowance of a preferred claim, and the said claim was allowed as a general claim as hereinbefore stated.

10. On September 11, 1914, said William C. Niblack, as receiver of said La Salle Street Trust & Savings Bank, filed a certain proof of unsecured debt against said bankrupt estate of O'Gara Coal Company in the above entitled court and cause, claiming the sum of Fifteen Thousand Nine Hundred Eight Dollars and Twenty Cents (\$15,908.20), with interest thereon at the rate of six per cent per annum from September 6, A. D. 1913, upon the promissory note of said bankrupt mentioned in paragraph number 3 above hereof, and thereafter, on August 21, 1917, filed an amended proof of secured debt upon said promissory note for the sum of Fifteen Thousand Dollars (\$15,000), with interest thereon as provided for by said note.

25 but no payments have been made or dividends paid upon said claim or received thereon by the said Receiver out of the assets of said bankrupt estate, or otherwise.

11. Upon the foregoing facts the Court Finds as a matter of law that said Frank G. Gardner, as trustee in bankruptcy of said O'Gara Coal Company, bankrupt, is entitled to have set-off against the claim of said Chicago Title & Trust Company, as receiver of the La Salle Street Trust & Savings Bank, the said sum of Twelve Thousand Eight Hundred Ninety-four Dollars and Ninety three Cents (\$12,894.93), and that upon the payment by said Frank G. Gardner, as trustee in bankruptcy as aforesaid, to Chicago Title and Trust Company, as receiver of said La Salle Street Trust & Savings Bank, of the balance due upon said promissory note, said Frank G. Gardner, as trustee in bankruptcy as aforesaid, is entitled to the cancellation of said bankrupt's said promissory note and its delivery up to said Frank G. Gardner, as trustee in bankruptcy as aforesaid, together with said fifteen hundred (1,500) shares of the capital stock of said Harrisburg-Saline Collieries Company pledged as aforesaid as collateral security for the payment of said promissory note for Fifteen Thousand Dollars (\$15,000).

It is Therefore Ordered, Adjudged and Decreed by the Court that the prayer of the petition of said Frank G. Gardner, as trustee in



bankruptcy herein (as aforesaid) be and the same is hereby granted, and that said Frank G. Gardner, as said trustee (in bankruptcy aforesaid), to pay to said Chicago Title and Trust Company, as receiver of the La Salle Street Trust & Savings Bank the sum of — Dollars (\$—), being the amount due and owing upon said promissory note executed on bkpt. for Fifteen Thousand Dollars (\$15,000) after allowing thereon as a set-off the sum of Twelve Thousand Eight Hundred Ninety-four Dollars and Ninety-three Cents (\$12,894.93), and that upon said payment being made the liability of said bankrupt upon said note be extinguished and said Chicago Title and Trust Company, as receiver of said La Salle Street Trust & Savings Bank, deliver to said Frank G. Gardner, as trustee in bankruptcy, as aforesaid, the said promissory note duly cancelled, and surrender to said Frank G. Gardner, as trustee in bankruptcy, as aforesaid, said fifteen hundred (1,500) shares of the capital stock of said Harrisburg-Saline Collieries Company.

27 It is further ordered, adjudged and decreed by the Court that upon the payment herein provided to be made by said Frank G. Gardner, as trustee in bankruptcy as aforesaid, to said Chicago Title and Trust Company, as receiver of the La Salle Street Trust & Savings Bank, and the cancellation and surrender of said note and the surrender of said collateral, the claims of said receiver herein filed and identified as Numbers 222 and 267 respectively, shall stand as satisfied in full on the records of said bankrupt estate in the above entitled court and cause and the claim of said Frank G. Gardner, as trustee in bankruptcy as aforesaid, against said La Salle Street Trust & Savings Bank shall be deemed paid and satisfied.

2. Said order was and is erroneous and void in that it was and is contrary to the evidence and to the facts recited therein and contrary to the law applicable to the evidence and to said facts, and the same is in fact a nullity.

Wherefore your petitioner prays that the said order may be reviewed as provided in the Bankruptcy Act of 1898, General Order XXVII.

Dated November 1, 1920.

CHICAGO TITLE & TRUST  
COMPANY,  
*Receiver of the La Salle Street  
Trust & Savings Bank Petitioner.*

STATE OF ILLINOIS,  
*Cook County, ss:*

Abel Davis, being first duly sworn, on oath deposes and says that he is vice president of Chicago Title and Trust Company which is the receiver of the La Salle Street Trust and Savings Bank and the petitioner in the foregoing petition; that he has read the said petition and knows the contents thereof and that the same is true according to the best of his knowledge, information and belief.

ABEL DAVIS.

Subscribed and sworn to before me this 1st day of November, 1920  
[SEAL.] ALBERT L. HALL,

*Notary Public*

(Endorsed:) Filed Nov. 3, 1920. Sidney C. Eastman Referee.

(Endorsed:) Filed Nov. 5, 1920. John H. R. Jamar, Clerk.

28 And on to-wit: the third day of February, 1921, the following order was entered:

*Order of Feb. 3, 1921.*

In the District Court of the United States for the Northern District of Illinois, Eastern Division.

Thursday, February 3, A. D. 1921.

Present: The Honorable George A. Carpenter, Judge.

No. 21311.

In re O'GARA COAL COMPANY, Bankrupt.

The Court having taken time to consider and being now fully advised in the matter certified to the court by Referee in Bankruptcy Sidney C. Eastman, by his certificate filed herein on November 1, A. D. 1920, it is ordered that the order of Referee Sidney C. Eastman entered herein on October 26, A. D. 1920, directing that the prayer of the petition of Frank G. Gardner, as trustee herein, be granted and that said Frank G. Bardiner, as said trustee, pay to said Chicago Title and Trust Company, as receiver of the La Salle Street Trust & Savings Bank, the sum of — being the amount due and owing upon a promissory note executed by the Bankrupt to one C. J. Munday for Fifteen Thousand Dollars, after allowing thereon as set-off the sum of Twelve Thousand Eight Hundred Ninety-four Dollars and Ninety-three Cents, and that upon payment being made of said amount, the liability of said bankrupt upon said note be extinguished and said Chicago Title and Trust Company, as receiver of said La Salle Street Trust & Savings Bank, deliver to said Frank G. Gardner, as said trustee, the said promissory note duly cancelled, and surrender to said Frank G. Gardner, as trustee in bankruptcy as aforesaid, the fifteen hundred shares of the capital stock of the Harrisburg Saline Collieries Company, given by said Bankrupt to secure the payment of said promissory note; and directing further that upon the payment provided herein to be made by said Frank G. Gardner, as trustee as aforesaid, to said Chicago Title & Trust Company, as receiver as aforesaid, and the cancellation and surrender

29 said note and the surrender of said collateral, the claims of said receiver herein filed identified as Numbers 222 and 223 respectively, shall stand as satisfied in full on the records of said

bankrupt estate in this court, and the cause and claim of said Frank G. Gardner, as trustee as aforesaid, against said La Salle Street Trust & Savings Bank be deemed paid and satisfied—be and the same hereby is affirmed.

And on to-wit: the eleventh day of February, 1921, there was filed in the office of the Clerk of said Court, a certain Petition in words and figures following to-wit:

*Petition for Appeal.*

Filed Feb. 11, 1921.

District Court of the United States, Northern District of Illinois,  
Eastern Division.

In Bankruptcy.

No. 21311.

In the Matter of O'GARA COAL COMPANY, Bankrupt.

CHICAGO TITLE & TRUST COMPANY, as Receiver of the La Salle Street  
Trust & Savings Bank, Appellant,

vs.

FRANK G. GARDNER, as Trustee in Bankruptcy of O'Gara Coal Com-  
pany, Appellee.

In the Matter of the Petition for Review of CHICAGO TITLE & TRUST  
COMPANY, as Receiver of the La Salle Street Trust and Savings  
Bank.

The above named petitioner, Chicago Title & Trust Company, as  
Receiver of the La Salle Street Trust & Savings Bank, conceiving it-  
self aggrieved by the order entered on February 3, A. D. 1921, in  
the above entitled proceeding does hereby appeal from said order to  
the United States Circuit Court of Appeals for the Seventh  
30 Circuit and it prays that this, its appeal, may be allowed:  
and that a transcript of the record and proceedings and papers  
on which said order was made, duly authenticated, may be sent to the  
United States Circuit Court of Appeals for the Seventh Circuit.

HIRAM T. GILBERT,

*Attorney for Appellant.*

Appeal allowed bond \$500.00.  
Bond approved.

CARPENTER,  
*Judge.*

11 Feb. 1921.

(Endorsed:) Filed Feb. 11-1921. John H. R. Jamar, Clerk.

(Endorsed:) In Bankruptcy, No. 21311. U. S. District Court Northern District of Illinois Eastern Division. In the Matter of O'Gara Coal Company, Bankrupt. Petition of Chicago Title & Trust Company, as receiver of La Salle Street Trust and Savings Bank for appeal. Hiram T. Gilbert, Attorney for Appellant.

And on to-wit: the 11th day of February, 1921, there was filed in the office of the Clerk of said Court a certain Assignment of Errors in words and figures following to-wit:

31

Filed Feb. 11, 1921.

United States Circuit Court of Appeals for the Seventh Circuit.  
October Term, A. D. 1921.

In the Matter of O'GARA COAL COMPANY, Bankrupt.

CHICAGO TITLE & TRUST COMPANY, as Receiver of the La Salle Street Trust & Savings Bank, Appellant,

vs.

FRANK G. GARDNER, as Trustee in Bankruptcy of O'Gara Coal Company, Appellee.

Appeal from District Court of the United States in and for the Northern District of Illinois.

*Assignment of Errors.*

And now comes the said Chicago Title & Trust Company, as receiver of the La Salle Street Trust & Savings Bank, appellant, by Hiram T. Gilbert, its attorney, and says that in the record and proceedings aforesaid there is manifest error in this, to-wit:

1. The District Court erred in confirming the order of the referee Sidney C. Eastman, Esq., made and entered October 26th, 1920, requiring appellant, Chicago Title & Trust Company as receiver of the La Salle Street Trust & Savings Bank upon the payment to it by Frank G. Gardner, as trustee in bankruptcy of O'Gara Coal Company, bankrupt, of — Dollars, (\$—), to deliver up to him as such trustee in bankruptcy, the promissory note in said order mentioned and described and the fifteen hundred (1500) shares of the capital stock of the Harrisburg-Saline Collieries Company in said order mentioned.

2. The District Court erred in confirming the finding of said referee Sidney C. Eastman and in holding that as a matter of law said Frank G. Gardner, as trustee in bankruptcy of said O'Gara Coal Company, bankrupt, was entitled to a set-off against the claim of said Chicago Title & Trust Company, as receiver of the La  
32 Salle Street Trust & Savings Bank, the sum of Twelve Thousand Eight Hundred Ninety-four Dollars and Ninety-three Cents (\$12,894.93) and that upon the payment by said Frank G.

Gardner, as trustee in bankruptcy as aforesaid, to said Chicago Title Trust Company, as receiver of said La Salle Street Trust & Savings Bank, of the balance which would be due upon the promissory note for \$15,000 mentioned in said order after crediting thereon the dividend of \$4963.35 paid on or about August 14, 1916 by the receiver of said La Salle Street Trust & Savings Bank to the trustee in bankruptcy of said O'Gara Coal Company, and the further dividend of \$1985.34 paid on June 19, 1918, by said receiver to said trustee in bankruptcy, said Frank G. Gardner, as trustee in bankruptcy was entitled to the cancellation of said bankrupt's promissory note and its delivery up to said Frank G. Gardner, as trustee in bankruptcy as aforesaid, together with the fifteen hundred (1500) shares of the capital stock of said Harrisburg-Saline Collieries Company pledged as collateral security for the payment of said promissory note for \$15,000.

3. The District Court erred in finding that said Frank G. Gardner, as trustee in bankruptcy of said O'Gara Coal Company, was entitled to set off against the claim of said Chicago Title & Trust Company, as receiver of said La Salle Street Trust & Savings Bank, upon said promissory note for \$15,000, the balance of the claim of the trustee of the O'Gara Coal Company, bankrupt, against said La Salle Street Trust & Savings Bank remaining after deducting therefrom the dividends paid by said receiver of said La Salle Street Trust & Savings Bank to said trustees in bankruptcy of said O'Gara Coal Company.

4. The District Court erred in not finding that said Chicago Title & Trust Company, as receiver of said La Salle Street Trust & Savings Bank was not bound to deliver up to said Frank G. Gardner, as trustee in bankruptcy of said O'Gara Coal Company, said fifteen hundred (1500) shares of the capital stock of said Harrisburg-Saline Collieries Company, until the payment to said Chicago Title & Trust Company, as receiver of said La Salle Street Trust & Savings Bank, of the principal of said promissory note for \$15,000, with interest thereon as provided by said promissory note.

5. The District Court erred in not reversing the order of said referee Sidney C. Eastman, Esq., made and entered on October 26, 1920.

33 6. The District Court erred in not allowing a claim in favor of said Chicago Title & Trust Company, as receiver of said La Salle Street Trust & Savings Bank, against said O'Gara Coal Company, bankrupt, for the principal of said promissory note of \$15,000 and interest thereon from the date thereof and in requiring the payment of said claim by said Frank G. Gardner, as trustee in bankruptcy of said O'Gara Coal Company.

7. The District Court erred in denying the petition for review of said Chicago Title & Trust Company as receiver of the La Salle Street Trust & Savings Bank, appellant.

And the said Chicago Title & Trust Company, as receiver of said La Salle Street Trust & Savings Bank, appellant, prays that the said order of said District Court may be reversed with directions to said District Court to enter such order in lieu thereof as justice may require.

HIRAM T. GILBERT,  
*Attorney for Appellant.*

(Endorsed:) Filed Feb. 11-1921. John H. R. Jamar, Clerk.

And on to-wit: the eleventh day of February, 1921, in the record of proceedings thereof in said entitled cause, before the Honorable George A. Carpenter, Judge, appears the following entry:

*Order of Feb. 11, 1921.*

In the District Court of the United States, Northern District of Illinois, Eastern Division.

Friday, February 11, A. D. 1921.

Present: Honorable George A. Carpenter, District Judge.

No. 21311.

In re O'GARA COAL COMPANY, Bankrupt.

On motion of Chicago Title and Trust Company supported by its petition heretofore filed herein for an appeal to the United States Circuit Court of Appeals for the Seventh Circuit, it appearing  
34 to the court that said petitioner has filed its assignment of errors together with its appeal bond in the sum of five hundred dollars, it is ordered that said appeal be and the same hereby is allowed.

And on to-wit: the eleventh day of February, 1921, came Chicago Title and Trust Company, as principal, and Abel Davis as surety and filed, in the office of the Clerk of said Court a certain Bond on Appeal in words and figures following to-wit:

*Bond on Appeal.*

Filed Feb. 11, 1921.

Know all men by these presents that we, Chicago Title and Trust Company, as receiver of the La Salle Street Trust & Savings Bank as principal, and Able Davis, as surety, are held and firmly bound unto Frank G. Gardner, as Trustee in Bankruptcy of O'Gara Coal Company, in the penal sum of \$500.00 for the payment of which well and truly to be made we bind ourselves, our heirs, executors, administrators, assigns and successors, jointly and severally, firmly by these presents.

Witness our hands and seals this 11th day of February, A. D. 1921.

The condition of the above obligation is such that whereas on the 3rd day of February, 1921, the District Court of the United States in and for the Eastern Division of the Northern District of Illinois did enter an order denying a petition of the above bounden Chicago Title & Trust Company, as Receiver of the La Salle Street Trust & Savings Bank, for the review of an order entered on October 26, 1920, by Sidney C. Eastman, Esq., Referee in Bankruptcy, in the case of O'Gara Coal Company, bankrupt, and confirming said order of said Referee, from which said order of said District Court the above bounden Chicago Title & Trust Company, as Receiver as aforesaid, has prayed for and obtained an appeal to the United States Circuit Court of Appeals for the Seventh Circuit: Now, therefore, if the said Chicago Title & Trust Company, as Receiver as aforesaid, shall duly prosecute its said appeal and shall pay all costs and damages awarded against it and otherwise comply with said order appealed from, in case the same shall be affirmed by said United States Circuit Court of Appeals, then this obligation to be void, otherwise to remain in full force and effect.

[SEAL.]

CHICAGO TITLE & TRUST  
COMPANY.

*As Receiver of the La Salle Street  
Trust & Savings Bank,*

By ABEL DAVIS, V. P.

[SEAL.]

ABEL DAVIS.

[SEAL.]

O. K.

FRANK G. GARDNER,

*As Trustee in Bankruptcy of O'Gara Coal Co.*

Approved.

CARPENTER,

*Judge.*

11 Feb., 1921.

(Endorsed:) Filed Feb. 11, 1921 John H. R. Jamar Clerk.

(Endorsed:) Bankruptcy No. 21311. United States District Court Northern District Eastern Division. In the Matter of O'Gara Coal Company, a Corp. Bankrupt. Appeal Bond on Appeal by Chicago Title & Trust Company, Receiver, from Order Denying Petition for Review.

And on to-wit: the 26th day of February, 1921, there was filed in the office of the Clerk of said Court a certain Præcipe and Stipulation in words and figures following to-wit:

Filed Feb. 26, 1921.

District Court of the United States, Northern District of Illinois,  
Eastern Division.

In Bankruptcy.

No. 21311.

In the Matter of O'GARA COAL COMPANY, Bankrupt.

CHICAGO TITLE & TRUST COMPANY, as Receiver of the La Salle Street  
Trust & Savings Bank, Appellant,

vs.

FRANK G. GARDNER, as Trustee in Bankruptcy of O'Gara Coal Com-  
pany, Appellee.

In the Matter of the Petition for Review of CHICAGO TITLE & TRUST  
COMPANY, as Receiver of the La Salle Street Trust & Savings  
Bank.

Appeal to United States Circuit Court of Appeals for the Seventh  
Circuit.

To the clerk of said District Court:

You will please prepare a transcript of the record in the above en-  
titled matter for the purposes of the appeal to the United States  
Circuit Court of Appeals, for the Seventh Circuit, which shall contain  
the following:

1. The petition filed November 3, 1920, by Chicago Title & Trust  
Company, as receiver of the La Salle Street Trust & Savings Bank,  
before Sidney C. Eastman, Esq., as Referee in Bankruptcy, praying  
for the review by said District Court of the order entered by said  
Sidney C. Eastman, on October 26, 1920, as certified to said District  
Court by said referee, together with the papers accompanying the  
same and certified by said referee.

2. The certificate of Sidney C. Eastman, referee, together with  
the papers accompanying the same and certified by said referee.

3. The order entered February 3, 1921, by said District Court con-  
firming said order so made by said Sidney C. Eastman, Esq., referee  
in Bankruptcy, as aforesaid.

4. The assignment of errors filed in said court February 11,  
1921, by said Chicago Title & Trust Company, as receiver of  
said La Salle Street Trust & Savings Bank.

5. The petition filed in said District Court February 3, 1921, by  
said Chicago Title & Trust Company, as receiver of the La Salle



reet Trust & Savings Bank for an appeal to the United States Circuit Court of Appeals for the Seventh Circuit, together with the order of the Judge of said District Court allowing said appeal.

6. The appeal bond filed February 11, 1921, in said District Court said Chicago Title & Trust Company, as receiver of the La Salle Street Trust & Savings Bank and the approval thereof by the judge said District Court.

7. The copy of this praepe and stipulation.

Dated Chicago, Illinois, February 12, 1921.

CHICAGO TITLE & TRUST  
COMPANY,

*As Receiver of the La Salle Street  
Trust & Savings Bank.*

By HIRAM T. GILBERT,  
*Its Attorney.*

*Stipulation.*

It is hereby stipulated by and between the parties as follows:

1. That the transcript of the record made up in accordance with the foregoing praepe is sufficient to present to the United States Circuit Court of Appeals the questions presented by the appeal.

2. That the appellee Frank G. Gardner, as trustee in bankruptcy, of the O'Gara Coal Company, bankrupt, waives the issuance of the service of a citation in said appeal and will enter its appearance in said Circuit Court of Appeals.

Dated Chicago, Illinois, February 12, 1921.

HIRAM T. GILBERT,

*Attorney for Chicago Title & Trust Co., Re-  
ceiver of the La Salle St. Tr. & Sav. Bk.*

JUDAH WILLARD WOLF & R.,

*Attorneys for Frank G. Gardner, Trustee in  
Bankruptcy of O'Gara Coal Company, Bankrupt.*

(Endorsed.) Filed Feb. 26, 1921. John H. R. Jamar, Clerk.

38

*Certificate of Clerk.*

NORTHERN DISTRICT OF ILLINOIS.

*Eastern Division, ss:*

I, John H. R. Jamar, Clerk of the District Court of the United States for the Northern District of Illinois, do hereby certify the above and foregoing to be a true and complete transcript of the proceedings had of record made in accordance with Praepe filed in this Court in the cause entitled In the Matter of O'Gara Coal Company, Bankrupt, as the same appear from the original records and files thereof, now remaining in my custody and control.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Court at my office, in the City of Chicago, in said District, this 16th day of March A. D. 1921.

[SEAL.]

JOHN H. R. JAMAR,  
*Clerk.*

39

Filed Mar. 23, 1921.

United States Circuit Court of Appeals for the Seventh Circuit

No. 2954.

In the Matter of O'GARA COAL COMPANY, Bankrupt.

CHICAGO TITLE & TRUST COMPANY, as Receiver of the La Salle Street Trust & Savings Bank, Appellant,

vs.

FRANK G. GARDNER, as Trustee of O'Gara Coal Company, Bankrupt, Appellee.

Appeal from District Court of United States, Eastern Division of Northern District of Illinois.

It is hereby stipulated by and between the parties that the above entitled cause be consolidated and heard with cause No. 2933 pending in this court entitled Chicago Title & Trust Company, as Receiver of the La Salle Street Trust & Savings Bank, petitioner, vs. Frank G. Gardner, as trustee in bankruptcy of O'Gara Coal Company, respondent, and that the record in the above entitled cause No. 2954 only need be printed.

Dated Chicago, Illinois, March 16, 1921.

HIRAM T. GILBERT,  
*Attorney for Appellant in Cause No. 2954 and for Petitioner in Cause No. 2933.*

JUDAH WILLARD WOLF &  
RICHIMANN,  
*Attorneys for Appellant in Cause No. 2954 and for Respondent in Cause No. 2933.*

Endorsed: No. 2954. U. S. Circuit Court of Appeals. Seventh Circuit. In the Matter of O'Gara Coal Company, Bankrupt. Chicago Title & Trust Company, Receiver, etc., Appellant, vs. Frank G. Gardner, Trustee, etc. Appellee. Stipulation to Consolidate with No. 2933 and for Printing of Record No. 2954. Filed Mar. 23, 1921. Edward M. Holloway, Clerk.

*Order of Mar. 31, 1921.*

United States Circuit Court of Appeals for the Seventh Circuit.

No. 2954.

CHICAGO TITLE & TRUST COMPANY, as Receiver of the La Salle  
Street Trust & Savings Bank, Appellant,

vs.

FRANK G. GARDNER, as Trustee of O'Gara Coal Company, Bankrupt,  
Appellee.

Appeal from District Court of United States, Eastern Division,  
Northern District of Illinois.

This day, on motion of appellant, Chicago Title & Trust Company,  
as receiver of the La Salle Street Trust & Savings Bank, the appellee,  
Frank G. Gardner, as trustee of O'Gara Coal Company, bankrupt,  
consenting thereto, it is ordered that this cause be consolidated and  
heard with cause No. 2933, being Chicago Title & Trust Company,  
as receiver of the La Salle Street Trust & Savings Bank, petitioner,  
against Frank G. Gardner, as trustee in bankruptcy of O'Gara Coal  
Company, bankrupt, respondent, and that the record in this cause be  
printed and the printing of the record in cause No. 2933 be dispensed  
with.

Enter.

BAKER,  
C. J.

3 31 21.

O. K.

HIRAM T. GILBERT,  
*For Appellant.*

JUDAH W. W. & R.,  
*For Appellee.*

Endorsed: No. 2954. In the U. S. Circuit Court of Appeals.  
Chicago Title & Trust Company as receiver, etc., Appellant, vs.  
Frank G. Gardner, as Trustee, etc., Appellee. Order for Consolida-  
tion Cause No. 2933.

Endorsed: United States Circuit Court of Appeals for the Seventh  
Circuit October Term 1920. No. 2954. In re O'Gara Coal Co. Bank-  
rupt. Order Consolidating etc. Filed Mar. 31, 1921. Edward M.  
Holloway, Clerk.

41 & 42 United States Circuit Court of Appeals for the Seventh Circuit.

I, Edward M. Holloway, Clerk of the United States Circuit Court of Appeals for the Seventh Circuit, do hereby certify that the foregoing pages, numbered from 1 to 40, inclusive, contain a true copy of the printed record, printed under my supervision and filed July 2nd, 1921, on which the following entitled cause was heard and determined: In the Matter of O'Gara Coal Company, Bankrupt, Chicago Title & Trust Company, As Receiver of the La Salle Street Trust and Savings Bank, Appellant, vs. Frank G. Gardner, as Trustee in Bankruptcy of the O'Gara Coal Company, Appellee, No. 2954, October Term, 1920, as the same remains upon the files and records of the United States Circuit Court of Appeals, for the Seventh Circuit.

In testimony whereof I hereunto subscribe my name and affix the seal of said United States Circuit Court of Appeals for the Seventh Circuit, at the City of Chicago, this thirteenth day of March, A. D. 1922.

[Seal United States Circuit Court of Appeals, Seventh Circuit.]

EDWARD M. HOLLOWAY,

*Clerk of the United States Circuit Court of  
Appeals for the Seventh Circuit.*

43 At a regular term of the United States Circuit Court of Appeals for the Seventh Circuit, begun and held in the United States Court room, in the city of Chicago, in said Seventh Circuit on the fifth day of October 1920, of the October term in the year of our Lord one thousand nine hundred and twenty and of our Independence the one hundred and forty-fifth.

And afterwards, to-wit: On the seventeenth day of March, 1921, in the October term last aforesaid, came the appellant, by its counsel, Mr. Hiram T. Gilbert, and filed in the office of the clerk of this court his appearance, which said appearance is in the words and figures following, to-wit:

United States Circuit Court of Appeals for the Seventh Circuit,  
October Term, 1920.

No. 2954.

In the Matter of O'GARA COAL Co., Bankrupt.

CHICAGO TITLE & TRUST Co., Receiver, Appellant,

vs.

FRANK G. GARDNER, as Trustee, Appellee.

The clerk will enter my appearance as counsel for the appellant.  
HIRAM T. GILBERT.

[Endorsed:] Filed Mar. 17, 1921. Edward M. Holloway, Clerk

And afterwards, to-wit: On the twenty-third day of March, 1921,  
in the October term last aforesaid, there was filed in the office of the  
clerk of this court a certain Stipulation in re printing record, etc.,  
which said Stipulation is not copied here as the same appears on  
page 39 of the printed record in this cause, certified herewith.

4 And afterwards, to-wit: On the thirty-first day of March,  
1921, in the October term last aforesaid, the following further  
proceedings were had and entered of record, to wit:

Thursday, March 31, 1921.

Court met pursuant to adjournment.

Present:

Hon. Francis E. Baker, Circuit Judge, presiding.  
Hon. Samuel Alschuler, Circuit Judge.  
Hon. Evan A. Evans, Circuit Judge.  
Hon. George T. Page, Circuit Judge.  
Edward M. Holloway, Clerk.

Before Hon. Francis E. Baker, Presiding Judge.

2954.

In the Matter of the O'GARA COAL COMPANY, Bankrupt.  
CHICAGO TITLE & TRUST COMPANY, Receiver of the La Salle Street  
Trust & Savings Bank,

VS.

FRANK G. GARDNER, Trustee of the O'Gara Coal Company,  
Bankrupt.

Appeal from the District Court of the United States for the Northern  
District of Illinois, Eastern Division.

This day, on motion of appellant, Chicago Title & Trust Company, as receiver of the La Salle Street Trust & Savings Bank, the appellee, Frank G. Gardner, as trustee of O'Gara Coal Company, bankrupt, consenting thereto, it is ordered that this cause be consolidated and heard with cause No. 2933, being Chicago Title & Trust Company, as receiver of the La Salle Street Trust & Savings Bank, petitioner against Frank G. Gardner, as trustee in bankruptcy of O'Gara Coal Company, bankrupt, respondent, and that the record in this cause be printed and the printing of the record in cause No. 2933 be dispensed with.

45 And afterwards, to-wit: On the twenty-sixth day of March, 1921, in the October term last aforesaid, came the appellee by his counsel, Mr. Henry M. Wolf, Mr. A. F. Reichmann and Mr. Arthur M. Cox, and filed in the office of the clerk of this court their appearance, which said appearance is in the words and figures following, to-wit:

United States Circuit Court of Appeals for the Seventh Circuit  
October Term, 1920.

No. 2954.

In re O'GARA COAL COMPANY, Bankrupt.

CHICAGO TITLE & TRUST Co., as Receiver, etc., Appellant.

VS.

FRANK G. GARDNER, as Trustee, etc., Appellee.

The clerk will enter my appearance as counsel for the appellee.

HENRY M. WOLF.  
A. F. REICHMANN.  
ARTHUR M. COX.

1501 Corn Exchange Bk. Bld.  
Tel. Franklin 205.

[Endorsed:] Filed May 26, 1921. Edward M. Holloway, Clerk.

At a regular term of the United States Circuit Court of Appeals for the Seventh Circuit, begun and held in the United States Court room, in the city of Chicago, in said Seventh Circuit, on the fourth day of October, 1921, of the October term in the year of our Lord one thousand nine hundred and twenty-one and of our Independence the one hundred and forty-sixth.

46 And afterwards, to-wit: On the fourth day of October, 1921, in the October term last aforesaid, the following further proceedings were had and entered of record, to-wit:

Tuesday, October 4, 1921.

Court opened by proclamation of crier.

Present:

Hon. Francis E. Baker, Circuit Judge, presiding.  
Hon. Samuel Alschuler, Circuit Judge.  
Hon. Evan A. Evans, Circuit Judge.  
Hon. George T. Page, Circuit Judge.  
Edward M. Holloway, Clerk.  
John J. Bradley, Marshal.

Before Hon. Francis E. Baker, Circuit Judge; Hon. Samuel Alschuler, Circuit Judge; Hon. Evan A. Evans, Circuit Judge.

2954.

In the Matter of O'GARA COAL Co., Bankrupt.

CHICAGO TITLE & TRUST Co., as Receiver, etc.,

VS.

FRANK G. GARDNER, as Trustee, etc.

Appeal from the District Court of the United States for the Northern District of Illinois, Eastern Division.

It is ordered by the court that this cause be, and the same is hereby set down for hearing on October 12, 1921.

And afterwards, to-wit: On the twelfth day of October, 1921, in the October term last aforesaid, the following further proceedings were had and entered of record, to-wit:

47

Wednesday, October 12, 1921.

Court met pursuant to adjournment and was opened by proclamation of crier.

Present:

Hon. Francis E. Baker, Circuit Judge, presiding.  
Hon. Samuel Alschuler, Circuit Judge.  
Hon. Evan A. Evans, Circuit Judge.  
Hon. George T. Page, Circuit Judge.  
Edward M. Holloway, Clerk.  
John J. Bradley, Marshal.

Before Hon. Francis E. Baker, Circuit Judge; Hon. Samuel Alschuler, Circuit Judge; Hon. Evan A. Evans, Circuit Judge.

2954.

In the Matter of O'GARA COAL CO., Bankrupt.

CHICAGO TITLE & TRUST CO., as Receiver, etc.,

vs.

FRANK G. GARDNER, as Trustee, etc.

Appeal from the District Court of the United States for the Northern District of Illinois, Eastern Division.

Now this day come the parties by their counsel and this cause now comes on to be heard on the printed record and briefs of counsel and on oral arguments by Mr. Hiram T. Gilbert, counsel for appellant and by Mr. A. F. Reichmann, counsel for appellee, and the court having heard the same takes this matter under advisement.

And afterwards, to-wit: On the third day of January, 1922, in the October term last aforesaid, there was filed in the office of the clerk of this court the Opinion of the court, which said Opinion is in the words and figures following, to-wit:



In the United States Circuit Court of Appeals for the Seventh Circuit, October Term and Session, 1921.

Nos. 2933, 2954.

In the Matter of O'GARA COAL COMPANY, Bankrupt.

CHICAGO TITLE & TRUST COMPANY, as Receiver of the La Salle Street Trust & Savings Bank, Appellant,

VS.

FREDERICK G. GARDNER, as Trustee in Bankruptcy of the O'Gara Coal Company, Appellee.

Appeal from the District Court of the United States for the Northern District of Illinois, Eastern Division.

Before Baker, Alschuler, and Evans, Cir. JJ.

In 1913 O'Gara Coal Company became bankrupt. It owed the La Salle Street Trust & Savings Bank a note for \$15,000. Trustees of the bankrupt deposited funds of the estate in this bank, which was an authorized depository of the district court. June, 1913, the bank became insolvent and suspended business, and a receiver was appointed in the state court. On suspension of the bank the deposit of the trustee was almost \$20,000. The state court appointed a receiver for the bank who, in September, 1914, exhibited in the bankruptcy court proof of unsecured claim against the bankrupt based on said note due the bank, which was allowed in full. June, 1916, trustees in bankruptcy filed in the state court claim for the amount of such deposits and demanding priority for the claim. Afterwards the demand for priority was abandoned, and claim allowed in full as a general claim. In the liquidation of the assets of the bank its receiver has paid creditors two dividends, the trustee in bankruptcy being paid as such dividends on its claim allowed against the bank for the deposits, August, 1916, \$4,963.35, and June, 1918, \$1,985.34. May 22, 1918, trustee in bankruptcy filed its petition in the bankruptcy court setting forth the facts substantially as above stated, and alleging that by section 68 of the Bankruptcy Act the trustee is entitled to set off against the claim of the receiver of the bank the amount which is due to the bankrupt estate from the bank as aforesaid, praying for decree setting off such claims, and that upon payment of balance, if any, which may then be due on such note, certain collateral which accompanied said note may be ordered to be surrendered by the receiver of the bank. October, 1920, the referee entered an order granting the prayer of the petition for set-off and decreeing accordingly, and February, 1921, the district court confirmed such order and decree. The matter is brought here both by appeal and petition to review and revise.

*Opinion by Alschuler, Cir. J.*

Only questions of law are involved which we will dispose of without determining the question of appellate procedure. The primary and controlling question is, was there at the time the bank suspended a right of set off as between these demands? Section 68 provides that "in all cases of mutual debts or mutual credits between the estate of the bankrupt and the creditor the account shall be stated and one debt set off against the other and the balance only shall be allowed or paid." We are met upon the threshold with the condition that the deposits were not made by the bankrupt which, but for the bankruptcy, would presumably have had the right to determine whether or not it would select as its depository the bank to which it was at the same time indebted, and which it knew had a right to apply the deposit upon any debt due the bank. The deposit here was made by the trustee in bankruptcy, an officer of the court, in a bank which was by the court and under the law designated as a depository for funds of bankrupt estates; not of this bankrupt alone but of any bankrupt. Indeed under the pleadings here it does not appear that at the time these deposits were made the trustee in bankruptcy was aware that the bank held any such claim against the bankrupt, for it appears that only after the bank suspended was the claim of the bank exhibited in the O'Gara bankruptcy proceedings. This fact

may not in strictness affect the question of the right of setoff, but it serves to show the doubtless unintended result which might flow from holding the bank and trustee in bankruptcy to be in such relation toward each other that the respective claims might be considered "mutual debts."

The relation between a bank and its patron under which the latter borrows from the bank and carries there a checking account, of itself suggests that mutuality which is a proper subject for the setoff of contra debts. The depository here is but the agent of the court, or more directly of the officer of the court in the holding of the funds which the court controls. If it chanced that a bankrupt was personally indebted to a receiver or a trustee of an estate, could the trustee apply the funds coming into his hands in this capacity upon a debt personally owed the trustee by the bankrupt? The question answers itself. So if the trustee, instead of himself holding the money, constitutes some bank his agent or depository for the purpose of safely keeping it, there is not thereby constituted between them that legal or equitable mutuality which would enable the claims to be set off.

While here it is the depositor who is undertaking to have the claims set off as mutual debts, in order to succeed the mutuality must be such that at the time of the insolvency they may be the subject of setoff. In this case it would be the time of the suspension of the bank. If at that time each debtor had not a right of setoff against the other, neither had such right. But it is hardly conceivable that prior to the suspension of the bank it was within its right and power to have applied the deposit made by the trustee in bankruptcy upon

the bank's claim against the bankrupt. If a bank had the right so to do, no legal representative of a bankrupt estate could safely deposit funds of the estate in any bank, for it may be that without the knowledge of the depositor, the bank may hold a claim against the bankrupt, by virtue of which the bank could appropriate the deposit and apply it upon the bank's claim, to the detriment of other creditors of the bankrupt. Such legal representative, if so minded, might deliberately deposit with a creditor bank the funds of the estate with the very purpose of putting it in the bank's power to appropriate such funds upon the claim of the bank, and thus under sanction of the law prefer the bank. It seems too plain for argument that this cannot properly be done. If prior to the suspension of the bank it could not properly have seized upon and applied the trustee's deposit, could not properly be done by the bank's trustee after the suspension.

1 The fact that this bank was a depository which under the law of the court had designated as such also militates against the proposition of mutuality of debt. To the extent that legally authorized depositories are less than the whole number of banks, the choice of the trustee is narrowed to such banks as have been duly authorized. Had there been but one the trustee would have only "Hobson's choice." Surely it could not have been intended that in limiting the number of depositories in which such funds may be placed there be incurred even remotely the risk of the lawful appropriation of funds to which normally all creditors are entitled, to the claim of one creditor whose legal or equitable standing was not different from the others, save only in the fortuitous circumstance that the court's officer happened to deposit there funds of the bankrupt estate.

The right to setoff of the bankrupt estate as against the insolvent bank and its creditors, is not different from the right of setoff of the insolvent bank as against the bankrupt and its creditors. There are not here such "mutual debts" as in law or in equity may properly be set off.

In *re United Grocery Co.*, 253 Fed. 267, considers a situation quite identical with that here, and reaches the same conclusion as above indicated. The main reliance in support of the decree is the case of *People v. California Safe Deposit & Trust Co.*, 168 Cal. 261. While in some respects that case may be distinguished, there is much in it which if followed here would justify this decree. In this respect, however, we are not in accord with its holding.

We find that claim of the receiver of the bank and that of the trustee in bankruptcy were not properly the subject of setoff, and direct that the order or decree entered in the district court be set aside, and that the petition to set off the claims be dismissed.

A True Copy.

Teste:

---

*Clerk of the United States Circuit Court  
of Appeals for the Seventh Circuit.*

52 And afterwards, on the same day, to-wit: On the third day of January, 1922, in the October term last aforesaid, the following further proceedings were had and entered of record, to-wit:

Tuesday, January 3, 1922.

Court met pursuant to adjournment and was opened by proclamation of crier.

Present:

Hon. Francis E. Baker, Circuit Judge, presiding.  
 Hon. Samuel Alschuler, Circuit Judge.  
 Hon. Evan A. Evans, Circuit Judge.  
 Hon. George T. Page, Circuit Judge.  
 Hon. Claude Z. Luse, District Judge.  
 Edward M. Holloway, Clerk.  
 Robert R. Levy, Marshal.

Before Hon. Francis E. Baker, Circuit Judge; Hon. Samuel Alschuler, Circuit Judge; Hon. Evan A. Evans, Circuit Judge.

2954.

In the Matter of O'GARA COAL COMPANY, Bankrupt.

CHICAGO TITLE & TRUST COMPANY, as Receiver of the La Salle Street Trust & Savings Bank,

vs.

FRANK G. GARDNER, as Trustee in Bankruptcy of the O'Gara Coal Company.

Appeal from the District Court of the United States for the Northern District of Illinois, Eastern Division.

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Northern District of Illinois, Eastern Division, and was argued by counsel.

On consideration whereof, It is now here ordered, adjudged and decreed by this court that this cause be, and the same is hereby commanded to the said District Court with direction to set aside the order or decree of the said District Court appealed from; and it is further ordered that the petition to set off the claims be dismissed.

53 & 54 And it is further ordered that the costs on this appeal be taxed against the appellee.

And afterwards, to-wit: On the second day of March, 1922, in the October term last aforesaid, there was filed in the office of the clerk of this court a certain Præcipe for transcript of record, which said Præcipe is in the words and figures following, to-wit:

Nos. 2933 & 2954.

In re O'GARA COAL CO.

Consolidated Appeal & Petition to Review & Revise.

Hon. Edward M. Holloway, clerk U. S. Circuit Court of Appeals:

Please prepare and print the following record for the Supreme Court of the United States for certiorari:

1. Complete transcript of record of No. 2954.
2. Proceedings in this court in No. 2954.
3. Petition to review & revise in No. 2933 (except the exhibits hereto; said exhibits being shown in the record of No. 2954 on appeal).
4. Proceedings in this court in No. 2933.

HENRY M. WOLF.  
A. F. REICHMANN.  
ARTHUR M. COX.

Endorsed: Filed Mar. 2, 1922. Edward M. Holloway, Clerk.

5 & 56 United States Circuit Court of Appeals for the Seventh Circuit.

I, Edward M. Holloway, Clerk of the United States Circuit Court of Appeals for the Seventh Circuit, do hereby certify that the foregoing pages, numbered from 43 to 53, inclusive, contain a true copy of the proceedings had and papers filed (except the briefs of counsel and stipulation relating thereto) as called for in the Præcipe filed on March 2nd, 1922, in the following entitled cause: In the Matter of O'Gara Coal Company, bankrupt. Chicago Title & Trust Company, as Receiver of the La Salle Street Trust and Savings Bank, Appellant, vs. Frank G. Gardner, as Trustee in Bankruptcy of the O'Gara Coal Company, Appellee, No. 2954, October Term, 20, 1921. The same remains upon the files and records of the United States Circuit Court of Appeals, for the Seventh Circuit.

In testimony whereof I hereunto subscribe my name and affix the Seal of said United States Circuit Court of Appeals for the Seventh Circuit, at the City of Chicago, this thirteenth day of March, A. D. 1922.

[Seal of United States Circuit Court of Appeals, Seventh Circuit.]

EDWARD M. HOLLOWAY,  
*Clerk of the United States Circuit Court  
of Appeals for the Seventh Circuit.*

57 At a regular term of the United States Circuit Court of Appeals for the Seventh Circuit, begun and held in the United States Court room, in the city of Chicago, in said Seventh Circuit on the fifth day of October 1920, of the October term in the year of our Lord one thousand nine hundred and twenty and of our Independence the one hundred and forty-fifth.

And afterwards, to-wit: On the eleventh day of February, 1921, in the October term aforesaid, there was filed in the office of the clerk of this court a certain Petition to Review and Revise, which said Petition is in the words and figures following-to-wit:

In the United States Circuit Court of Appeals for the Seventh Circuit. — Term, A. D. 1921.

No. 2933.

In the Matter of O'GARA COAL COMPANY, Bankrupt.

FRANK G. GARDNER, Trustee in Bankruptcy of the Estate of O'Gara Coal Company, Bankrupt,

vs.

CHICAGO TITLE & TRUST COMPANY, as Receiver of the La Salle Street Trust & Savings Bank.

Appeal from the District Court of the United States for the Northern District of Illinois, Eastern Division.

To the Honorable the Judges of the Circuit Court of Appeals of the United States for the Seventh Circuit:

Your petitioner, Chicago Title & Trust Company, a corporation, as receiver of the La Salle Street Trust & Savings Bank, brings this its petition, against Frank G. Gardner, as trustee in bankruptcy, of O'Gara Coal Company, a corporation, and thereupon your petitioner says:

1. On the 26th day of October, A. D. 1921, Sidney C. Eastman Esq. referee in bankruptcy of the District Court of the United States, in and for the Eastern Division of the Northern District of Illinois, in the matter of O'Gara Coal Company, a corporation, bankrupt, on the application of Frank G. Gardner, trustee in bankruptcy, of said bankrupt, entered an order that said Frank G. Gardner, as trustee in bankruptcy as aforesaid, pay to petitioner, Chicago Title & Trust Company, as receiver of the La Salle Street Trust & Savings Bank, the sum of — Dollars, (\$—), as the amount due and owing upon a promissory note of Fifteen Thousand Dollars (\$15,000), held by petitioner and made by said O'Gara Coal Company on or about September 6th, A. D. 1913, after allowing thereon as set-off the sum of Twelve Thousand Eight hundred ninety-four Dollars and Ninety-three Cents (\$12,894.93) and that upon said payment being made the liability of said bankrupt upon said note be extinguished and that petitioner, Chicago Title & Trust Company, as receiver of said La

La Salle Street Trust & Savings Bank, should deliver to said Frank G. Gardner, as trustee in bankruptcy, as aforesaid, the said promissory note duly cancelled and surrender to said Frank G. Gardner, as trustee in bankruptcy as aforesaid, fifteen hundred (1,500) shares of the capital stock of the Harrisburg-Saline Collieries Company then held by petitioner, as receiver of said La Salle Street Trust & Savings Bank, as security for said promissory note and that upon the payment in said order provided to be made by said Frank G. Gardner, as trustee in bankruptcy as aforesaid, to petitioner, Chicago Title & Trust Company as receiver of said La Salle Street Trust & Savings Bank, and the cancellation and surrender of said note and the surrender of said collateral, the claims of petitioner therein filed and identified as numbers 222 and 267 respectively, stand as satisfied in full in the records of said bankrupt estate in said District Court and that the claim of said Frank G. Gardner, as trustee in bankruptcy, of said O'Gara Coal Company against said La Salle Street Trust & Savings Bank should be deemed paid and satisfied.

2. On November 3, A. D. 1920, petitioner filed before said Sidney C. Eastman, as referee in bankruptcy as aforesaid, his petition praying that said above mentioned order might be reviewed as provided in the Bankruptcy act of 1898, General Order XXVII, which petition said Sidney C. Eastman, as referee in bankruptcy as aforesaid, duly certified to said District Court.

3. On February 3, A. D. 1921, said District Court entered an order confirming said order so made by said Sidney C. Eastman, referee in bankruptcy as aforesaid.

59 4. Said order and the judgment of said District Court confirming the same were and are erroneous and void in that said order and said judgment were and are contrary to the evidence and to the facts deciphered in said order and contrary to the law applicable to the evidence and the said facts and that said order was and is in fact a nullity and that the same should have not been confirmed by said District Court but on the contrary should have been revised and set aside.

5. A certified transcript of the proceeding of said District Court in said matter is hereunto annexed and is made a part of this petition.

Wherefore your petitioner feeling itself aggrieved by the said order and judgment confirming the same prays that the same may be revised in matters of law by your honorable court as provided by the Bankruptcy Act and the rules of practice in such case made and provided.

CHICAGO TITLE & TRUST  
COMPANY,

*Receiver of the La Salle Street  
Trust and Savings Bank.*

HIRAM T. GILBERT,  
*Attorney for Petitioner.*

\_\_\_\_\_,  
*Attorney for Petitioner.*

STATE OF ILLINOIS,  
Cook County, ss:

Abel Davis being first duly sworn on his oath deposes and says that he is vice-president of Chicago Title & Trust Company, receiver of the La Salle Street Trust & Savings Bank, the petitioner in the foregoing petition, that he has read the said petition and knows the contents thereof and that the matters and things therein alleged are true to the best of his knowledge, information and belief.

ABEL DAVIS.

Subscribed and sworn to before me this 9th day of February, A. D. 1921.

[SEAL.]

IRENE J. BLISS,  
Notary Public.

Endorsed: Filed February 11, 1921. Edward M. Holloway, Clerk.

60 And afterwards, to-wit: On the thirty-first day of March, 1921, in the October term aforesaid, the following further proceedings were had and entered of record, to-wit:

Thursday, March 31, 1921.

Court met pursuant to adjournment.

Present:

Hon. Francis E. Baker, Circuit Judge, presiding.  
Hon. Samuel Alschuler, Circuit Judge.  
Hon. Evan A. Evans, Circuit Judge.  
Hon. George T. Page, Circuit Judge.  
Edward M. Holloway, Clerk.

Before Hon. Francis E. Baker, Presiding Judge.

2933.

In the Matter of the O'GARA COAL COMPANY, Bankrupt.

CHICAGO TITLE & TRUST COMPANY, Receiver of the La Salle Street Trust & Savings Bank,

vs.

FRANK G. GARDNER, Trustee of the O'Gara Coal Company Bankrupt.

Original Petition to Review and Revise an Order of the District Court of the United States for the Northern District of Illinois, Eastern Division.

This day on motion of the petitioner, Chicago, Title & Trust Company, as receiver of the La Salle Street Trust & Savings Bank.



respondent, Frank G. Gardner, as Trustee of O'Gara Coal Company, bankrupt, consenting thereto, it is ordered that this cause be consolidated and heard with cause No. 2954, being Chicago Title Trust Company, as receiver of the La Salle Street Trust & Savings Bank, appellant, against Frank G. Gardner, as trustee in bankruptcy of O'Gara Coal Company, bankrupt, appellee, and that the record in said cause No. 2954 be printed and the printing of the record in this cause be dispensed with.

At a regular term of the United States Circuit Court of Appeals for the Seventh Circuit, begun and held in the United States Court room, in the city of Chicago, in said Seventh Circuit on the fourth day of October 1921, of the October term in the year of our Lord one thousand nine hundred and twenty-one and of our Independence the one hundred and forty-sixth.

And afterwards, to-wit: On the fourth day of October, 1921, in the October term last aforesaid, the following further proceedings were had and entered of record, to-wit:

Tuesday, October 4, 1921.

Court opened by proclamation of crier.

Present:

Hon. Francis E. Baker, Circuit Judge, presiding.  
Hon. Samuel Alschuler, Circuit Judge.  
Hon. Evan A. Evans, Circuit Judge.  
Hon. George T. Page, Circuit Judge.  
Edward M. Holloway, Clerk.  
John J. Bradley, Marshal.

Before Hon. Francis E. Baker, Circuit Judge; Hon. Samuel Alschuler, Circuit Judge; Hon. Evan A. Evans, Circuit Judge.

2933.

In the Matter of O'GARA COAL Co., Bankrupt.

CHICAGO TITLE & TRUST Co., as Receiver, etc.,

vs.

FRANK G. GARDNER, as Trustee, etc.

Original Petition to Review and Revise an Order of the District Court of the United States for the Northern District of Illinois, Eastern Division.

It is ordered by the court that this cause be, and the same is hereby set down for hearing on October 12, 1921.

And afterwards, to-wit: On the twelfth day of October 1921, in the October term last aforesaid, the following further proceedings were had and entered of record, to-wit:

Wednesday, October 12, 1921.

Court met pursuant to adjournment and was opened by proclamation of crier.

Present:

Hon. Francis E. Baker, Circuit Judge, presiding.  
 Hon. Samuel Alschuler, Circuit Judge.  
 Hon. Evan A. Evans, Circuit Judge.  
 Hon. George T. Page, Circuit Judge.  
 Edward M. Holloway, Clerk.  
 John J. Bradley, Marshal.

Before Hon. Francis E. Baker, Circuit Judge; Hon. Samuel Alschuler, Circuit Judge; Hon. Evan A. Evans, Circuit Judge.

2933.

In the Matter of O'GARA COAL CO., Bankrupt.

CHICAGO TITLE & TRUST CO., as Receiver, etc.,

vs.

FRANK G. GARDNER, as Trustee, etc.

Original Petition to Review and Revise an Order of the District Court of the United States for the Northern District of Illinois, Eastern Division.

Now this day come the parties by their counsel and this cause now comes on to be heard on the printed record and briefs of counsel and on oral arguments by Mr. Hiram T. Gilbert, counsel for petitioner, and by Mr. A. F. Reichmann, counsel for respondent, and the court having heard the same takes this matter under advisement.

And afterwards, to-wit: On the third day of January, 1922, in the October term last aforesaid, there was filed in the office of the clerk of this court, the Opinion of the court, which said Opinion is not copied here, as the same appears in the transcript of record in cause No. 2954, In the Matter of O'Gara Coal Company, Bankrupt, certified herewith.

And afterwards, on the same day, to-wit: On the third day of January, 1922, in the October term last aforesaid, the following further proceedings were had and entered of record, to-wit:

Tuesday, January 3, 1922.

Court met pursuant to adjournment and was opened by proclamation of crier.

Present:

Hon. Francis E. Baker, Circuit Judge, presiding.  
 Hon. Samuel Alschuler, Circuit Judge.  
 Hon. Evan A. Evans, Circuit Judge.  
 Hon. George T. Page, Circuit Judge.  
 Hon. Claude Z. Luse, District Judge.  
 Edward M. Holloway, Clerk.  
 Robert R. Levy, Marshal.

Before Hon. Francis E. Baker, Circuit Judge; Hon. Samuel Alschuler, Circuit Judge; Hon. Evan A. Evans, Circuit Judge.

2933.

In the Matter of O'GARA COAL COMPANY, Bankrupt.

CHICAGO TITLE & TRUST COMPANY, as Receiver of the La Salle Street Trust & Savings Bank,

vs.

FRANK G. GARDNER, as Trustee in Bankruptcy of the O'Gara Coal Company.

Original Petition to Review and Revise an Order of the District Court of the United States for the Northern District of Illinois, Eastern Division.

This cause came on to be heard on the petition to review and revise an order of the District Court of the United States for the Northern District of Illinois, Eastern Division, entered thereon on February 3, 1921, and the answer thereto, and was argued by counsel.

On consideration whereof, It is now here ordered, adjudged and decreed by this court that the said order of the said District Court be, and the same is hereby set aside and that the petition to set off the claims be dismissed.

And it is further ordered that the costs on this petition to review and revise be taxed against the respondent.

And afterwards, to-wit: On the second day of March, 1922, in the October term last aforesaid, there was filed in the office of the clerk of this court a certain Præcipe for Record, which said Præcipe is not copied here, as the same appears in the transcript of record in cause No. 2954, certified herewith.

## 65 United States Circuit Court of Appeals for the Seventh Circuit

I, Edward M. Holloway, Clerk of the United States Circuit Court of Appeals for the Seventh Circuit, do hereby certify that the foregoing pages, numbered from 57 to 64, inclusive, contain a true copy of the proceedings had and papers filed (except the Opinion of the court, which appears in the transcript of record in cause No. 2954, certified herewith, the Præcipe for record, which also appears in the transcript of record in cause No. 2954, certified herewith, and the briefs of counsel) as called for in the Præcipe for Record filed March 2nd, 1922, in the following entitled cause: In the Matter of O'Gara Coal Company, Bankrupt. Chicago Title & Trust Company, as Receiver of the La Salle Street Trust & Savings Bank, Petitioner, vs. Frank G. Gardner, as Trustee in Bankruptcy of the O'Gara Coal Company, Respondent, No. 2933, October Term, 1920, as the same remains upon the files and records of the United States Circuit Court of Appeals, for the Seventh Circuit.

In testimony whereof I hereunto subscribe my name and affix the seal of said United States Circuit Court of Appeals for the Seventh Circuit, at the City of Chicago, this thirteenth day of March, A. D. 1922.

[Seal of the United States Circuit Court of Appeals, Seventh Circuit.]

EDWARD M. HOLLOWAY,  
*Clerk of the United States Circuit Court  
of Appeals for the Seventh Circuit.*

## 66 In the Supreme Court of the United States.

FRANK G. GARDNER, as Trustee in Bankruptcy of the O'Gara Coal Co., Petitioner,

vs.

CHICAGO TITLE & TRUST Co., as Receiver of the La Salle St. Trust & Savings Bank.

*Assignments of Error.*

I. The Circuit Court of Appeals erred in remanding this cause to the District Court with directions to set aside the order or decree of the District Court appealed from.

II. The Circuit Court of Appeals erred in ordering that the petition to set off the claims be dismissed.

III. The Circuit Court of Appeals erred in entering the order on the petition to review and revise, setting aside the order of the District Court and directing that the petition to set off the claims be dismissed.

IV. The Circuit Court of Appeals erred in ordering the costs on the appeal to be taxed against the appellee.

V. The Circuit Court of Appeals erred in ordering that the costs on the petition to review and revise be taxed against the respondent.

HENRY M. WOLF,  
A. F. REICHMANN,  
ARTHUR M. COX,

*Counsel for Petitioner.*

67 UNITED STATES OF AMERICA, ss:

[Seal of the Supreme Court of the United States.]

The President of the United States of America to the Honorable the Judges of the United States Circuit Court of Appeals for the Seventh Circuit, Greeting:

Being informed that there is now pending before you a suit in which Chicago Title & Trust Company, as Receiver of the La Salle Street Trust & Savings Bank, is appellant, and Frank G. Gardner, as Trustee in Bankruptcy of the O'Gara Coal Company, is appellee, Nos. 2933, 2954, which suit was removed into the said Circuit Court of Appeals by virtue of an appeal from the District Court of the United States for the Northern District of Illinois, and we, being willing for certain reasons that the said cause and the record and proceedings therein should be certified by the said Circuit Court of Appeals and removed into the Supreme Court of the United

68 States, do hereby command you that you send without delay to the said Supreme Court, as aforesaid, the record and proceedings in said cause, so that the said Supreme Court may act thereon as of right and according to law ought to be done.

Witness the Honorable William H. Taft, Chief Justice of the United States, the twenty-ninth day of April, in the year of our Lord one thousand nine hundred and twenty-two.

WM. R. STANSBURY,  
*Clerk of the Supreme Court of the United States.*

In the United States Circuit Court of Appeals for the Seventh Circuit, October Term and Session, A. D. 1921.

In the Matter of O'GARA COAL COMPANY, Bankrupt.

CHICAGO TITLE & TRUST COMPANY, as Receiver of the La Salle Street Trust and Savings Bank, Appellant,

vs.

FRANK G. GARDNER, as Trustee in Bankruptcy of the O'Gara Coal Company, Appellee.

Consolidated Causes.

Appeal from the District Court of the United States for the Northern District of Illinois, Eastern Division.

It is hereby stipulated that the record in the above causes Numbers 2933 and 2954 (which were heretofore consolidated by an order duly entered in this court on March 31, 1921) already filed in the Supreme Court of the United States in the matter of the Petition of Frank G. Gardner, as Trustee in Bankruptcy of the O'Gara Coal Company vs. Chicago Title and Trust Company, as Receiver of the La Salle Street Trust and Savings Bank, Number 846 of the October Term, A. D. 1921, shall stand as a return to the Writ of Certiorari issued by the Supreme Court of the United States on the twenty-ninth day of April, A. D. 1922.

Dated May 6, 1922.

HENRY M. WOLF,  
A. F. REICHMANN,  
ARTHUR M. COX,

*Counsel for Frank G. Gardner, as  
Trustee in Bankruptcy of the  
O'Gara Coal Company.*

HIRAM T. GILBERT,  
*Counsel for Chicago Title & Trust  
Company, as Receiver of the La  
Salle Street Trust and Savings  
Bank.*

Endorsed: Filed May 9, 1922. Edward M. Holloway, Clerk.

UNITED STATES OF AMERICA,  
*Seventh Circuit, ss:*

In obedience to the command of the foregoing writ of certiorari and in pursuance of the stipulation of the parties, a full copy of which is hereto attached, I do hereby certify and return that the transcript of the record filed with the application to the  
69 & 70 Supreme Court of the United States for a writ of certiorari in the cases of Chicago Title & Trust Company, as Receiver

of the La Salle Street Trust & Savings Bank, appellant, vs. Frank G. Gardner, as Trustee in Bankruptcy of the O'Gara Coal Company, appellee, Nos. 2933 and 2954, is a full, true and complete transcript of the record upon which said causes were heard in the United States Circuit Court of Appeals for the Seventh Circuit, together with all proceedings in said court.

In testimony whereof, I hereunto subscribe my name and affix the seal of said United States Circuit Court of Appeals for the Seventh Circuit at the City of Chicago this eleventh day of May, A. D. 1922.

[Seal of the United States Circuit Court of Appeals,  
Seventh Circuit.]

EDWARD M. HOLLOWAY,  
*Clerk of the United States Circuit Court of  
Appeals for the Seventh Circuit.*

[Endorsed:] File No. 28801. Supreme Court of the United States, October Term, 1921. No. 846. Frank G. Gardner, as Trustee in Bankruptcy, etc., vs. Chicago Title & Trust Company, as Receiver, etc. Writ of certiorari. Filed May 9, 1922. Edward M. Holloway, Clerk.

71 [Endorsed:] File No. 28801. Supreme Court U. S., October Term, 1921. Term No. 317. Frank G. Gardner, as Trustee in Bankruptcy, etc., Petitioner, vs. Chicago Title & Trust Company, as Receiver, etc. Writ of certiorari and return. Filed May 13, 1922.